

KIRKLEES METROPOLITAN COUNCIL

PLANNING SERVICE

UPDATE OF LIST OF PLANNING APPLICATIONS TO BE DECIDED BY PLANNING SUB-COMMITTEE (HEAVY WOOLLEN AREA)

13 OCTOBER 2016

10. Application for definitive map modification order to delete public footpath Batley 49 (part) from the definitive map and statement, and to add a public footpath at Hey Beck Lane, Woodkirk, Dewsbury

The council has received written submissions on behalf of the applicants Mr & Mrs Bragg, which can be found at the council's planning webpage for this item's appendices.

<https://democracy.kirklees.gov.uk/ecCatDisplay.aspx?sch=doc&cat=13403>

The submissions comprise:

Written submission for discussion at the Planning sub-committee from Mr A Dunlop

<https://democracy.kirklees.gov.uk/documents/s14846/Finalised%20written%20submissions%20of%20Andy%20Dunlop.pdf>

Mr Dunlop's submitted documents in his "schedule of documents" is on the council website at

<https://democracy.kirklees.gov.uk/documents/s14849/Final%20Submission%20-%20AD%20-%20Attachments.pdf>

Emailed statement on 1966 planning documents from Ramsdens of 11 October 2016.

<https://democracy.kirklees.gov.uk/documents/s14873/060.%20Ramsden%20e-mail.pdf>

Emailed 1960s planning documents from Ramsdens 11 October 2016.

<https://democracy.kirklees.gov.uk/documents/s14874/061.%20Ramsden%20e-mailed%20planning%20document.pdf>

The statement of Mr Dunlop identifies a number of alleged errors in the history of public rights of way recording and management in the Kirklees area of West Yorkshire. Mr Dunlop also disputes the officer report and officer views and offers his own for the benefit of the committee, which members are recommended to read and consider in full, along with his appended documents.

Issues raised are from Huddersfield (recording of byways in the production of the 1985 DMS; placement of a bridge along the byway over a quarry haul road), from Meltham (diversion of footpath 40, known to KC PROW, but yet to be subject to a legal event modification order; enforcement action) as well as from Batley (surveys for the '1952' DMS).

Officers would note that the report appendices do contain the walking schedule for what became Batley 49. Hey Beck Lane is a continuation of Batley Road westwards towards Batley and throughout the lengthy process that produced the '1952' DMS, there were opportunities to identify and amend this alleged error by the borough and county officers.

Officers would be happy to respond to any sub-committee queries on the issues raised. Mr Dunlop raises no new evidence, and officers would note the content of the officer report, including matters such as the relevant criteria to be satisfied.

Ramsdens have submitted papers from the 1966 planning process for a stable. In the email, the Braggs' solicitors claim that these documents "*confirm that Footpath number 49 was closed through 75a Heybeck Lane by, at the latest, February 1966 and thus infers at least 4 additional years to the period of use for Statutory presumed dedication of the new route as shown on the 1970 and later OS maps, confirmed as existing by the 1992 diversion attempt and not closed until 2012*"

Officers would note that these planning documents do not mention the public footpath. They do not mention diversion of the public footpath, they do not, as claimed, "*confirm the footpath was closed*" as they do not discount the possibility that any fence allegedly erected had gates, gaps or stiles to accommodate the continued public user of path 49. If the footpath was physically closed in 1966 and the public could not use it thereafter then it would contradict Mrs Hallas' report in evidence that Mrs Buckley had expressed some years after 1966 her desire to divert the footpath.

Additionally, Savile Estate conveyed the triangle of land to the Buckleys subject to the path, so **if** access did not continue along the path then he would likely be in breach of this civil requirement as well as, on the balance of probability, unlawfully obstructing the public footpath 49. A path blockage like this one alleged would be a far from unusual circumstance in the history of planning and PROWs, it does not mean the path was formally diverted or lawfully blocked.

Even if members decide to conclude that a public footpath has been reasonably alleged to have been established over the addition route by the public users, this is not the same as concluding that the original path has been diverted with legal authority. If people went elsewhere in a manner to satisfy the addition tests, a second footpath could potentially be established. Members should note that a planning consent does not authorise the obstruction or diversion of public paths. The officer recommendation remains.

CHANGE OF USE FROM WAREHOUSE TO A MIXED USE COMPRISING WAREHOUSE, FOOD PROCESSING, CASH AND CARRY AND SPECIALIST RETAIL FOODSTORE AND FORMATION OF CAR PARK**WELLINGTON MILLS, 7, PURLWELL LANE, BATLEY, WF17 5BH****ADDITIONAL INFORMATION FROM THE APPLICANT:**

A revised Car Park and Servicing Management Plan was received 4th October, with a further revision received 6th October. This proposes the following measures:

- A total of 23 parking spaces is proposed on site, with a further 6 spaces designated for Mullaco staff in the car park of Al-Hashim Academy on Providence Street. The parking spaces adjacent to the delivery area will be marked out for use by people with mobility difficulties. The company employs 17 staff on site. Of these employees five travel to work using a car / taxi, five use public transport, and the remainder walk.
- No storage of materials / pallets will be allowed within the car parking area.
- All refuse will be stored on site in a closed skip with collection taken place twice weekly.
- All goods transported in large HGV's will be delivered to Global Storage and Logistics on Soothill Lane, Batley. These goods will be collected in Mullaco's van / 3.5 to 7.5 T goods vehicle for transportation to the site.
- All deliveries on Charles Street will cease and be transferred to an extended area adjacent to the building. This area will be cordoned off from the public during all unloading operations using a fork lift truck. The goods will be transferred to a designated storage area and moved into the building at first floor level using a new access door. Drivers will be required to telephone the premises 30 minutes prior to arrival, to ensure the loading area is cleared of customer vehicles. This activity would take place at off peak periods when parking demand is less (before 1030am or between 1500 and 1700 hours). Appropriate warning signs will be erected.

In addition the applicant has suggested a temporary permission to allow time for the additional land to be purchased, the car park formed, and the full management plan to be implemented.

The revised plan has gone some way in addressing the concerns raised. In particular, the removal of all deliveries and fork lift truck movements from Charles Street represents a significant safety benefit.

However, the main concern is that fork lift movements within the site would still occur at times when the cash and carry / shop unit is open. Fork lift trucks would be delivering goods to a proposed first floor opening immediately adjacent to the entrance to the shop. Officers have seen video evidence of pallets falling off a fork lift truck onto Charles Street, and should such an

incident occur from a first floor height immediately adjacent to the entrance, there could be serious safety implications for pedestrians. The applicant was approached to find a possible solution where deliveries / fork lift truck movements could be restricted to times when the cash and carry / retail unit was closed, however the applicant is unwilling to make any further revisions to the plan. The management plan proposal to require delivery drivers to telephone 30 minutes prior to their arrival at Mulloca's is not considered to be practical or realistic to ensure the deliveries are managed in a systematic way to avoid conflict between different users of the car park.

The reduction in the number of parking spaces within the site to provide the fork lift truck parking area could, on balance, be considered to be acceptable provided that these were provided off-site as indicated in the plan. Officers however, have significant concerns about the safety aspect of fork lift trucks operating at first floor level immediately adjacent to the cash and carry / retail unit entrance. Officers consider that the applicant has not provided sufficient protection for pedestrians from fork lift truck movements and are unable to support the application on highway safety grounds.

The applicant has suggested a temporary permission for a period of 18-24 months to allow for the additional land to be purchased, the car park built and the full management plan to be implemented. Officers are concerned that a period of 18-24 months is too long for the retail unit to continue to operate without appropriate safety precautions. Should Members be minded to approve the application, it is advised that this be limited to no more than 12 months.

Furthermore, on the basis of the applicant's car park management plan as submitted, these issues could not be adequately mitigated against by imposing conditions. Notwithstanding the above, officers recommendation is to refuse the application in accordance with the revised reason below.

7. REPRESENTATIONS

The details of the revised Car Park and Management Plan have been re-advertised with the amended plans publicity expiring 12 October 2016.

22 further representations have been received. A number of issues previously raised have been repeated. In respect of the revised Car Park and Management Plan, the following comments have been raised.

1. Concern that the car park management plan is not being implemented as large delivery vehicles are arriving at Mullaco.

Response: Evidence has been provided to show large vehicles still accessing the site.

2. The car park management plan has increased the amount of trucks and small vehicles.

Response: Highways Development Management (HDM) has not raised an objection to the amount of deliveries on the highway network. The issue is whether safe delivery can be made within the site.

3. The proposal should be treated as a new build supermarket and there should be no forklift trucks in the car park or on the road.

Response: The proposal is for a mixed use development including a warehouse, food processing unit, cash and carry and a retail unit, and not a standalone supermarket. The proposal is therefore assessed on its own merits.

4. Acquiring additional land will not resolve the car parking and servicing issues and the intensification of traffic. The car park cannot provide servicing by vehicles entering and leaving the site in forward gear with customer vehicles parked. The delivery vehicle coming through the car park is too dangerous for the customer. The new servicing area is not enough for one delivery vehicle if a 10 metre vehicle makes a delivery, 5 parking spaces will be obstructed. On a normal day, the Mullaco car park is full with various delivery vehicles.

Response: Officers could accept the proposed layout, however there is not sufficient protection for pedestrians from fork lift truck movements and officers are therefore unable to support the application on highway safety grounds.

5. Mullaco have not provided any agreement with Al-Hashim school on Providence Street to provide the displaced parking spaces.

Response: This is set out in the Car Park and Management Plan. If permission is granted, the applicant would be required to adhere to this plan.

6. Concern the location of the skips is poor and splits up the parking bays

Response: Highway Services raise no objections to the proposed location of the skips.

7. How long is the agreement with Global Storage and Logistics.

Response: This is unknown. However, the applicant would be required to adhere to the details set out in the plan. If the plan could no longer be operated, the applicant would be open to enforcement action.

8. 15:00 to 1700 are peak school madressa times.

Response: The applicant refers to deliveries taken place at off peak periods when parking demand is less but does not specify particular times. The management plan alludes to parking demand being less before 10:30am and between the hours of 1500 and 1700, but does not propose that deliveries are restricted to such times. Officers have sought to find a solution which could restrict the hours of delivery but the applicant has been unwilling to revise the plan further.

9. Where will the shopping trolleys be kept?

Response: The layout plan does not propose any external storage of shopping trolleys.

10. Where will the fleet of Mullaco trucks and vans be parked?

Response: The agent was requested to confirm where the vans are kept. A response is awaited.

In respect of other new concerns:

11. Concern that staff of Mullaco are smoking at the entrance by the gates

Response: This is not a material consideration to the assessment of this application.

12. The search for a suitable alternative site was not done prior to submitting the revised application.

Response: The applicants report was prepared for the previous application (later withdrawn). This referred to The Council's Shopping Centre Occupancy Survey 2014, which was later updated in November 2015. The assessment in the report therefore, refers to the conclusions of the report by Compass Planning, together with the updated Council's Shopping Centre Occupancy Survey 2015. Their conclusion of the sequential test are that there no vacant units between 280 – 480 sq m in or around Batley Town Centre or the Local or Neighbourhood Centres and this is supported by the updated Council's Shopping Centre Occupancy Survey. Officers are satisfied that the sequential test has been satisfied.

13. Concern Pollution and Noise Control should have assessed the proposal before Mullaco opened the retail unit.

Response: The consultation of relevant Council and external departments is a normal part of the planning process upon receipt of an application. Environmental Services have been consulted as part of the application and advise that the current activity is unlikely to give rise to significant adverse effects, particularly during the day time if suitable parking provision and servicing is provided on site.

14. The statement that there was no demand for the upper floor of the building after Premier Beds vacated is false.

Response: The proposal is for a mixed use commercial development and there is no requirement for the developer to market the property.

15. The report fails to mention the other 2 loading bays erected without planning on the side of Charles Street.

Response: The revised parking and management plan proposes the removal of all deliveries and fork lift truck movements from Charles Street.

16. There is a very strong objection to the disposal of land.

Response: To facilitate the proposed extension to the car park, the applicant will need to acquire additional land to the north of the site. This land is owned by Kirklees Council. Discussion has been undertaken regarding the disposal of the site, but there is no record of an agreement being in place.

17. There is no mention of bike stands.

Response: The provision of adequate facilities for safe deliveries outweighs any desirability to provide bike stands within the site to serve the development.

9. RECOMMENDATION

Revised reason for refusal:

1. The proposal has failed to demonstrate that adequate servicing facilities can be provided to serve the intensified use and avoid conflict between different users of the car park at times of deliveries and movement of goods. The proposal would have an unacceptable impact on the safety of customers visiting the site. To approve the application would be contrary to Policy T10 of the Kirklees Unitary Development Plan which stipulates that new development should not prejudice highway safety.

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**ERECTION OF PLACE OF WORSHIP AND EDUCATIONAL CENTRE
(WITHIN A CONSERVATION AREA)**

**LAND AT THE CORNER OF NOWELL STREET & WEST PARK STREET,
DEWSBURY**

The application was withdrawn by the applicant's agent on 11 November 2016.
