
Report of the Head of Strategic Investment**STRATEGIC PLANNING COMMITTEE****Date: 05-Apr-2018****Subject: Planning Application 2018/90163 Change of use from plant nursery with retail sales to garden centre and formation of new access Fenay Bridge Nursery, Fenay Lane, Fenay Bridge, Huddersfield, HD8 0AR****APPLICANT**

A Shepherd

DATE VALID

24-Jan-2018

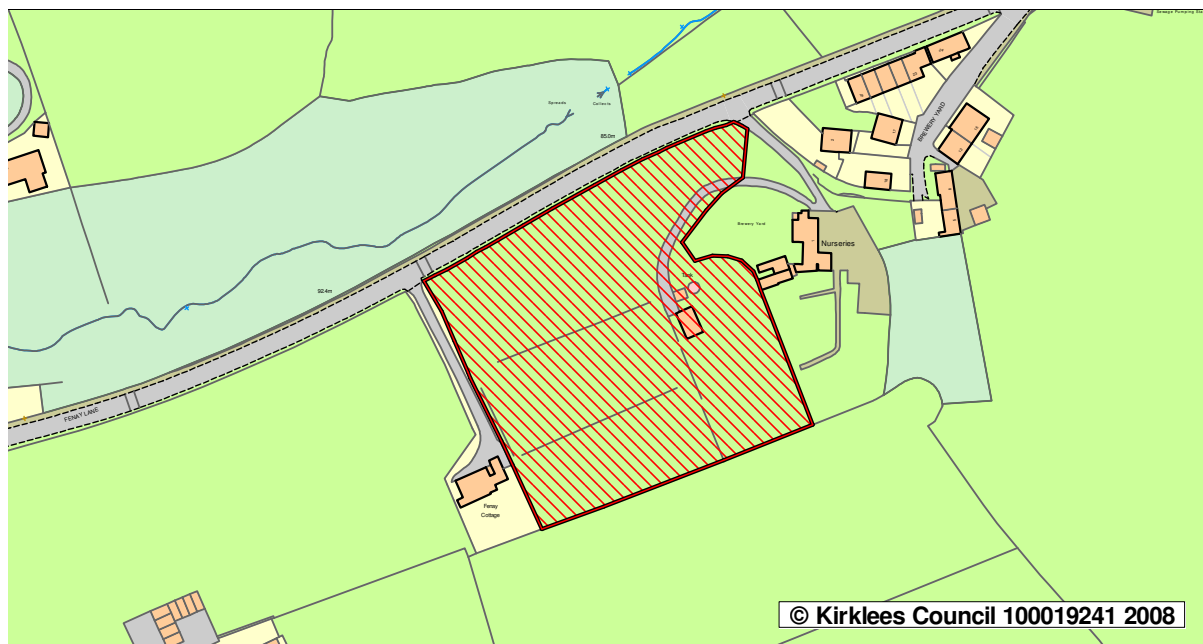
TARGET DATE

25-Apr-2018

EXTENSION EXPIRY DATE

Please click the following link for guidance notes on public speaking at planning committees, including how to pre-register your intention to speak.

<http://www.kirklees.gov.uk/beta/planning-applications/pdf/public-speaking-committee.pdf>

LOCATION PLAN

Map not to scale – for identification purposes only

Electoral Wards Affected: Almondbury

Yes

Ward Members consulted.
referred to in report

RECOMMENDATION:

DELEGATE approval of the application and the issuing of the decision notice to the Head of Strategic Investment in order to complete the list of conditions including those contained within this report

1.0 INTRODUCTION:

- 1.1 The application is brought to the Strategic Planning Committee in accordance with the Councils agreed scheme of delegated authority as the site exceeds 0.5 hectare and relates to a non- residential use.

2.0 SITE AND SURROUNDINGS:

- 2.1 The application relates to a site area of approx. 1.25ha. The site is accessed via a steep drive off Fenay Lane in the north east part of the site. Over two thirds of the site is occupied as a plant nursery and accommodates a number of poly-tunnels, open growing beds and two permanent buildings at the eastern end of the site. The remainder of the site accommodates level concreted areas. East of the site, is land in the ownership of the applicant consisting of a grade II listed residential property. There are open fields to the south and west with a small cluster of residential properties beyond the south west corner of the application site. The site is stated to be vacant since June 2017.

3.0 PROPOSAL:

- 3.1 The proposals are identical to the extant permission under application no. 2014/93595. The agent states the previous permission is due to expire on 21st December 2018 and as yet not no developer has come forward to carry out the development as previously approved.
- 3.2 The proposals are for the change of use of this site with retail sales to garden centre and the formation of a new vehicular access from Fenay Lane along the north western part of the site. Its former use was a plant nursery which ceased to operate in June 2017. From the information submitted with the application it is proposed to utilise the poly-tunnels together with the two existing permanent buildings for the display and retail sales areas.
- 3.3 The supporting statements accompanying this application is the same as those submitted under the 2014/93595 application which states the proposals to comprise of:
- 1,160 square yards (970 sq. m) of covered retail area in the areas indicated on drawing no. MS1,

- Sales at tills and ancillary café with toilets accommodated in one or both of the two permanent buildings, with a total floor area of approximately 260 square yards (217 sq. m).
- Retention of the open growing beds in the middle of the site
- Rationalisation of existing poly-tunnels

3.4 It is again, intended to close off the existing access replacing it with a new vehicular access to be formed in the north- west part of the site which would involve the construction of retaining walls. Existing areas of hardstanding within the site will be used for car parking. The proposals do not include any formal car parking layout.

3.5 It is anticipated that a total of 12 employees would be required

3.6 Hours of opening are indicated to be 9.30am to 6pm Monday to Friday and 10am to 6pm on weekends including bank holidays.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

4.1 2016/93230 – demolition of existing and erection of 5 no. dwellings- refused and dismissed on appeal for the following reasons:
Inappropriate development which would have a greater impact on the openness than the existing use with no very special circumstances to justify the development.

2014/93595 - change of use of this site with retail sales to garden centre and the formation of a new vehicular access from Fenay Lane – Conditional full permission by Strategic Committee Members December 2015

5.0 HISTORY OF NEGOTIATIONS (including revisions to the scheme):

5.1 None

6.0 PLANNING POLICY:

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for Kirklees currently comprises the saved policies within the Kirklees Unitary Development Plan (Saved 2007). The Council's Local Plan was submitted to the Secretary of State for Communities and Local Government on 25th April 2017, so that it can be examined by an independent inspector. The Examination in Public began in October 2017. The weight to be given to the Local Plan will be determined in accordance with the guidance in paragraph 216 of the National Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy Framework (2012), these may be given increased weight. At this stage of the Plan making process the Publication Draft Local Plan is considered to carry significant weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

6.2 Kirklees Unitary Development Plan (UDP) Saved Policies 2007:
T10 – Highway safety

T19 – Parking standards
D2 – efficient operation of existing and planned infrastructure

6.3 Kirklees Draft Local Plan Strategies and Policies (2017):

PLP10 - Supporting the rural economy
PLP 21 Highway safety and access
PLP28 – Drainage
PLP35 – Historic environment
PLP51 – Protection and improvement of local air quality
PLP53 – Contaminated and unstable land
PLP57 - the extension, alteration or replacement of existing buildings in the GB
PLP59 – infilling & redevelopment of brownfield sites

6.4 National Planning Guidance:

Section 2 – ensuring the vitality of town centres
Section 3 – Supporting a prosperous rural economy
Section 9 – Protecting the Green Belt Land
Section 10 – Meeting the challenge of climate change, flooding and coastal change
Section 12 – Conserving and enhancing the historic environment

7.0 PUBLIC/LOCAL RESPONSE:

- 7.1 The application has been advertised by site notices, in the local press and letters posted to neighbours abutting the site. In accordance with protocol, Ward Members were informed of the application/proposals. The publicity period expired on 14th March 2018. No representations are received.

8.0 STATUTORY CONSULTEE RESPONSES:

K.C DM Highways – no objection subject to conditions
K.C Lead Local Flood Authority (LLFA) - Informative notes/advice

K.C Public rights of Way (PROW) - no comments to make

9.0 MAIN ISSUES

- Applicants statement
- Principle of development
- Residential & visual amenity
- Heritage issues
- Highway issues
- Drainage issues
- Representations
- Conclusion

10.0 APPRAISAL

Applicants statement:

- 10.1 The site is stated to be vacant whereas at the time of considering the 2014 application it was partly in use as a plant nursery. As stated above the application is submitted with the same information and plans considered on the 2014/923595 application which at the time set out the applicants case as:

“Most of the poly-tunnels together with the two permanent buildings at the eastern end of the site are to be retained essentially for the core business of display and retail sales.

With regard to the existing operation the applicant states that “the majority of plants on site are bought in from growers predominantly in the North of England. They are then grown on in containers in the poly-tunnels to reach a size when they can be sold on to retailers or landscape gardeners. There are currently no imports as the recent harsh winters have caused a lot of lost stock being unable to survive our cold temperatures, even in poly-tunnels. This is why the nursery deals almost exclusively with domestic growers with plants being more hardy and able to withstand colder temperatures.

The element of retail is now only about 5% of total turnover. Up to the end of the 1980's the nursery advertised and operated equally as wholesale and retail. At that time wholesale began to dominate turnover and was seen as being more profitable than retail, as more customer service was necessary for the retail side. Currently the bulk of retail sales result from referrals from landscape gardeners who are aware of the stock and local people who know of the nursery.”

- 10.2 It was stated that approximately 10,000 sq feet of covered retail area would be provided as shown on the submitted plan.
- 10.3 Growing beds either in open ground in the middle of the site or in some or all of the existing polytunnels at the end of the site would be retained. Their appearance would be improved or they would be demolished.

“The proposed operation would still involve bringing in young seedlings to grow on to maintain the wholesale side of the business. They would then be used for both wholesale and retail sales. At the moment the nursery has spare capacity to be able to expand total stock. It is envisaged that plants for sale would be displayed in the polytunnels but actual sales at tills would take place in one or both of the two existing buildings of permanent construction shown on Plan MS1 submitted as part of the application. Within those two buildings, which have a total floor area of approximately 260 square yards, would also be displayed for sale higher value stock such as garden implements, fertilizers, garden clothing etc. There would also likely be an ancillary café and toilets, all of which are, of course, normally found within modern garden centres.

Ancillary goods would also be offered for sale as is now the market norm with garden centres. Sales of higher value goods would take place in the more substantial buildings which would be more secure than poly-tunnels.

The internal layouts within the two buildings have not been finalised. Once planning permission has been granted full details will be provided in anticipation that such will be required by condition before development commences.

It is accepted that the two permanent buildings are fairly basic structures and it is most likely that a further application will be made for changes to improve their external appearance. However, it is made clear that neither at this change of use stage or at any subsequent stage is it intended that there will be any increase in their footprint. As such there will be no greater impact on the openness of the green belt than the two permanent buildings and polytunnels currently have.

The application is merely for a change of use of the site together with a new access road. It is acknowledged that details of car parking and servicing will need to be provided, for which there is clearly ample space."

- 10.4 The applicant adds that the new access will be formed to accommodate the significantly increased public usage. The new access is designed taking into account the level changes and the existing banking. Vegetation would be cleared but none is of ecological or visual merit. Replacement planting would be acceptable.
- 10.5 The existing site access would be closed. The applicant considers that this has restricted visibility along both sides of Fenay Lane. The access involves HGV vehicles parking on Fenay Lane. The new access will remove this as well as providing improved visibility and gradient.

11.0 ASSESSMENT

Principle of development:

- 11.1 The site lies within the Green Belt on the Councils UDP. The change of use proposed is inappropriate development within the Green Belt and is therefore by definition harmful and should not be approved except in very special circumstances (para 87 NPPF).
- 11.2 Substantial weight should be given to any harm to the Green Belt; very special circumstances will not exist unless the potential harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. (para 88 NPPF).
- 11.3 The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
- 11.4 The site, although now stated to be vacant since June 2017, was previously used as a plant nursery with wholesaling, distribution and sales to the public since the 1980's. The site and the previous operation was well established and accommodated a number of poly-tunnels, open growing beds, two permanent buildings and areas of hardstanding within the site, with mature trees, hedges, landscaping and boundary walling.
- 11.5 Whilst visible within the landscape from more longer distant views, the site in its existing form is not considered to be unduly harmful to the openness of the Green Belt.
- 11.6 On the 2014 application the applicant stated that the use proposed will make utilise the existing growing beds and retail sales areas will be accommodated within the existing buildings and poly-tunnels. Car parking to support the change of use was to be accommodated using areas of existing hardstanding within the site.
- 11.7 At the time, officers considered that the change of use proposed from plant nursery to garden centre and car parking would not materially alter the physical character of the site nor would it result in significantly greater harm to the openness of the Green Belt than that which currently exists. Officer's opinion remains the same as it did previously.

- 11.8 The engineering operation of forming the new access is not inappropriate in the Green Belt provided that the openness of the Green Belt is preserved and it would not conflict with the purposes of including land in Green Belt. (para 90 NPPF).
- 11.9 The proposed new access from Fenay Lane would 'dog leg' up the existing vegetated embankment to meet an area of existing hard standing on the predominantly flat site above. Significant excavations and retaining structures will be required to accommodate the access, which in the opinion of officers, would have a significant impact upon the appearance of the embankment in the short term. In view of this, to lessen its affect over time, to help reduce the impact on the openness of the Green Belt and mitigate the stark appearance of the retaining structures, it is proposed to incorporate landscaping to either side of the proposed access as shown on drawing no. LD0007_201 Rev B, which are identical to that considered on the 2014 application.
- 11.10 In order to accommodate the proposed car parking area, landscaping within the site would need to be removed and the banking between the existing areas of hardstanding would need to be regraded, with the construction of a retaining wall within the site, adjacent to the proposed car park area.
- 11.11 Whilst the landscape layout shows how the visual impact of the proposed access will be mitigated, the engineering works proposed would have a greater impact upon the openness of the Green Belt than existing and therefore the engineering works themselves are also considered to be inappropriate.
- 11.12 It is therefore necessary to consider whether there are any other considerations that would outweigh the harm to the Green Belt in order to decide whether very special circumstances exist:
- Until the site becoming vacant in June 2017, the previous use/business was well established. This included wholesale and distribution and the sale of plants to the public without restrictions on opening hours. Historically the existing use also included an element of retail sales.
 - The proposal would create additional employment opportunities (estimated by the applicant to be 12). This would be in accordance with the advice of NPPF paragraph 19 which seeks to secure economic growth stating that "significant weight should be placed on the need to support economic growth through the planning system." Furthermore, this would support economic growth in a rural area through the conversion of the existing permanent buildings on site and increased employment opportunities for an existing land based rural business, in accordance with paragraph 28 of the NPPF.
 - The proposals will help improve the overall appearance of the site through rationalisation of the existing buildings, poly-tunnels and planting beds and improved landscaping.
 - The existing access into the site is substandard in terms of its gradient and visibility. The development provides an opportunity to address the existing access constraints through the formation of a new access.

- A grant of planning permission would give the Local Planning Authority the opportunity to control opening hours and the way in which the garden centre would operate, including limiting the extent of retail space and providing suitable parking facilities for staff and customers.

11.13 Taking into account the nature of the recent former use and current state of the site, the very special circumstances are demonstrated to be:

- benefits to the rural economy arising from the diversification of the previous use of the site,
- opportunity to improve the overall appearance of the site through the rationalisation of existing buildings and structures,
- vehicular access improvements, and
- the opportunity to control opening hours and the operation of the business.

11.14 Officers are of the opinion that the above very special circumstances which were previously considered to outweigh the potential harm to the Green belt on the 2014 application remain valid and acceptable on this application as the proposals are identical to those on the extant permission for application no. 14/93595. The proposals would accord with guidance in the NPPF as well as Policy PLP57(c) PLP59(e) of the PDLP and as such does not represent a departure from the UDP.

Impact on nearby Local Centres:

11.16 Section 2 of the NPPF advises Local Planning Authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. They should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. When considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre.

11.17 The change of use to a garden centre would result in a Class A1 use being formed on this site. This is a main town centre use and this site is out of centre. However, in the light of the applicant's statement above regarding the nature of the proposed and existing business and given that the operations of a garden centre are location specific, it was not considered necessary to request a sequential test in this case. Specifically as the ancillary retail and café/ toilets are to be conditioned to the areas specified and set out above.

11.18 The proposals as such would ensure that the vitality of nearby town centres is not compromised and therefore would be in accordance with section 2 of the NPPF.

Highway issues:

11.19 Policy T10 of the UDP states that new development should not materially add to any highway safety implications. Guidance in the NPPF states under paragraph 32 that plans and decisions should take account of whether, amongst other things, "safe and suitable access to the site can be achieved for all people". It goes on to state however that 'development should only be prevented or refused on transport grounds where the residual cumulative

impacts are severe'. Policy PLP21 of the PDLF reflects the above requirements and aims to ensure the safety of all users of the network is safeguarded.

- 11.20 The associated highway works are identical to those submitted and considered under the 2014 application, which include closing off the existing steep drive and to provide a new access and drive into the site in the north west part of the site, to be served from Fenay Lane. At the time Highway Officers requested further information in the form of vehicle swept paths along the proposed drive to assess the suitability of the access to accommodate HGV and other vehicle turning manoeuvres. In addition, given the proposed development would include an ancillary café and retail areas which would indisputably intensify the use of the site and vehicular movements to and from the site, the provision of on-site parking was demonstrated on an indicative car park layout. Drawing no. 03 demonstrates in part where parking provision could be accommodated on site. The formal details of car parking to serve the proposed use would need to be provided prior to the use becoming operational and can be secured by condition. This would be both in the interests of highway safety and in the interests of preserving the openness of the Green Belt.
- 11.21 It is accepted, as previously that the parking provision relative to the ancillary café and retail areas can be accommodated along the north eastern and western part of the site. Some of that area consists of fairly level existing concreted areas as well as disturbed gravel surfaced open plant beds. As stated above, this would require some engineering works to cut/infill to level the area.
- 11.22 Taking the above into account, and given the extent permission of identical proposals, officers opinion remains that on balance it is considered the residual cumulative impact on highway safety would not be 'severe' subject to the closing off the existing access and the provision of parking spaces before the ancillary retail and café areas are brought into use, as stated above, in accordance with Policies T10 and T19 of the UDP, Policy PLP 21 of the PDLF and advice in the NPPF.

Impact on visual and residential amenity:

- 11.23 The creation of a new vehicular access would result in part removal of the existing landscaping and embankment along Fenay Lane. Whilst this provides some amenity value along Fenay Lane it is not of a quality to be protected by way of a preservation order.
- 11.24 In the light of this and the applicant's agreement to condition replacement planting as stated above, the proposals involve little change to the external appearance of the site.
- 11.25 The site is separated from residential property to the south west and north east. The provision of a formal parking area in the north east part of the site would have no greater impact on the nearest property, beyond the south west corner of the site. In addition, conditioning the opening hours as stated on the application form would further ensure the amenity of nearby residential properties is not compromised. In such circumstances the proposal would not be harmful to residential amenity of any nearby residential properties.

Heritage issues:

- 11.26 Turning to the impact on the adjacent listed building, north east of the site, the Physical works to the accommodate the access would not be in close proximity to this listed building and as such the setting of this building would remain unaltered and therefore the proposals would cause no harm to the visual amenity or the setting of this listed building, in accordance with in accordance with paragraph 134 of the NPPF and the duty set out in the Listed Buildings and Conservation Areas Act 1990 and Chapter 12 of the NPPF and Policies PLP24 and 35 of the PDLF.

Drainage considerations:

- 11.27 With regards to Drainage issues, the LLFA on the 2014 application raised no objections and stated an examination of any additional hardstanding surface is required in respect of drainage and quality of any discharge to determine whether attenuation is required and the use of an oil/petrol interceptor. The advice on this current application is in line with the previous comments. Should Members be minded to approve the application, evidence of the existing and proposed surface water drainage arrangements would need to be submitted and approved by condition, as on the previous permission. Subject to the imposition of appropriate drainage conditions, it is considered the site can be adequately developed in accordance with the guidance in the NPPF, Policy PLP28 of the PDLF and UDP Policy D2.

Representations:

- 11.28 None received

Conclusion:

- 11.29 The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice.
- 11.30 This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development would constitute sustainable development.
- 11.31 Whilst the proposals constitute inappropriate development in the Green Belt, in light of there being no significant change in circumstances since the granting of the extant permission under application no. 2014/93595, Officers opinion remains the same as previous which is on balance that very special circumstances have been demonstrated which clearly outweighs the harm to the Green Belt by reason of inappropriateness and any other harm.
- 11.32 The conditions imposed on the 2014 permission are still considered necessary, relevant and appropriate for this application and would include restricting the ancillary café and retail areas to the areas identified on drawing no. MS1. There would be no materially harmful impact on the setting of the adjacent listed building, residential or visual amenity and highway safety.
- 11.33 In such circumstances it is considered that there are no adverse impacts of granting permission which would significantly and demonstrably outweigh the benefits when assessed against the policies in this framework taken as a whole,

or that specific NPPF policies indicate development should be restricted. In such circumstances the application is recommended for approval.

12.0 CONDITIONS (Summary list. Full wording of conditions including any amendments/additions to be delegated to the Head of Strategic Investment)
GRANT CONDITIONAL FULL PERMISSION

Conditions:

1. Time limit 3 years
2. In accordance with submitted plans/specifications
3. Restrict the hours of operation/use
4. Restrict the use garden centre and for no other purpose (including any other purpose within Class A1 of the Town and Country Planning (Use Classes) Order 1987
5. To restrict the ancillary retail sales areas/including café/toilets to the areas edged green on drawing no. MS1.
6. Scheme of highway works at site access road and the site access junction with Fenay Lane, including the footway along the site frontage (with reference to drawing no. 890/03) and all associated highway works.
7. Details of formal car park layout, service areas and waste storage within to be submitted and approved.
8. Visibility splays of 2.4 m x 43 m in both directions along Fenay Lane to be provided
9. The existing access to be permanently closed and the new access to be constructed in accordance with approved details
10. Details for the design and construction details of all temporary and permanent highway retaining structures within the site and off-site (retaining wall at Fenay Lane
11. Permeable surfacing of approved vehicle parking areas
12. Details/schedule of the means of access to the site for construction traffic including details of the times of use of the access
13. Details of the treatment of all surface water flows from parking areas and hard standings.
14. Details of a landscaping scheme i
15. Approved landscaping scheme to be carried in accordance with approved timescales & maintained for a period of five years from the completion of planting works.

Background Papers:

Application and history files.

Website link to be inserted here <https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2018%2f90163>

Certificate of Ownership – Notice served on:

The Shepard Foundation, C/o Mr A Shepard, High Green House, 1 Brewery Yard,
Fenay Lane, Fenay Bridge, Huddersfield HD8 0AR

Certificate B signed: