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**Report of the Head of Planning and Development**

**HEAVY WOOLLEN PLANNING SUB-COMMITTEE**

**Date: 05-Dec-2019**

**Subject: Planning Application 2019/92381 Change of use from retail/office to preparation and packaging of food, alterations to existing outbuilding and installation of vent 52, Wellington Street, Batley, WF17 5HU**

**APPLICANT**

K Hans

**DATE VALID**

30-Jul-2019

**TARGET DATE**

24-Sep-2019

**EXTENSION EXPIRY DATE**

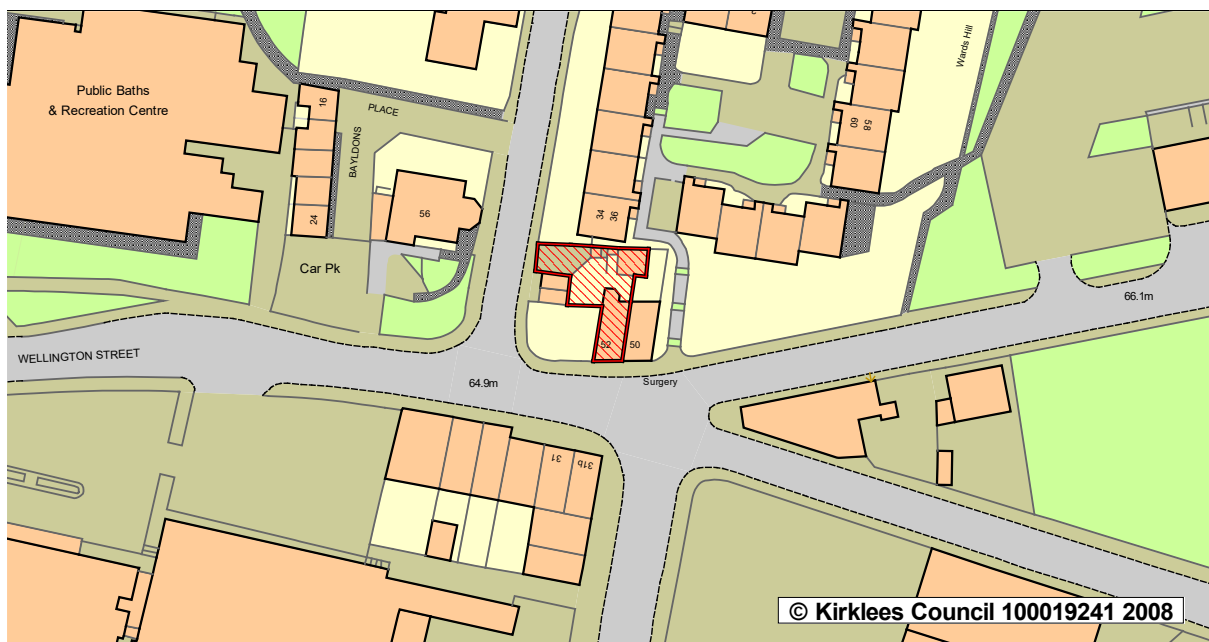
09-Dec-2019

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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**

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**Electoral Wards Affected: Batley East Ward**

Yes

Ward Members consulted  
(referred to in report)

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**RECOMMENDATION:**

**DELEGATE approval of the application and the issuing of the decision notice to the Head of Planning and Development in order to complete the list of conditions including those contained within this report.**

**1.0 INTRODUCTION:**

- 1.1 The application is for the proposed change of use of No.52 Wellington Street at Batley from retail/office use to preparation and packaging of food, and for alterations to the external outbuilding.
- 1.2 The application is referred to Heavy Woollen Planning Sub-Committee at the request of Councillor Habiban Zaman for the following reasons:

*“With this application there are issues regarding hours of operation which I object to. I would like the planning committee to make a decision on them.*

*I would also like a site visit to determine the effect on surrounding properties, particularly the impact on elderly residents”*

- 1.3 The Chair of the Sub-Committee has confirmed that Cllr Zaman’s reasons for referral to committee are valid having regard to the Councillor’s Protocol for Planning Committees.

**2.0 SITE AND SURROUNDINGS:**

- 2.1 The application site relates to a shop/office unit at no. 52 Wellington Street in Batley. The building appears to be vacant when viewed from Wellington Street with the shop front closed and secured by a roller shutter, however as witnessed on the site visit, the building is in use for the preparation, packaging and delivery of food with staff observed preparing food on the ground floor of the building.

2.2 The building itself occupies a corner plot with Wellington Street running to the south of the site and Hanover Street to the west. Access to the site is provided from Hanover Street to the rear of the plot and within the rear yard area is an outbuilding. The site is within a mixed commercial and residential area and is unallocated on the Kirklees Local Plan.

### **3.0 PROPOSAL:**

3.1 The application seeks planning permission for the change of use of No.52 Wellington Street from retail/office to the preparation and packaging of food. Evidence from the site visit confirms the business is already in operation within the main building.

3.2 Planning permission is also sought to use the rear outbuilding for cooking purposes, with external alterations proposed which include the erection of a small store extension accessed by external steps, and the installation of an extractor / air vent.

### **4.0 RELEVANT PLANNING HISTORY (including enforcement history):**

4.1 2009/90960 – Change of use from shop/office to takeaway/fast food operation – Refused

2015/93429 – Change of use from shop/office to hot food takeaway – Conditional Full Permission

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

5.1 The applicant was asked to clarify what external works they have already undertaken to the outbuilding and to show these on a scaled plan to be assessed as part of the planning application. Details of a vent have also been submitted.

5.2 Discussions have taken place with the applicant regarding the proposed hours of use. Environmental Services have suggested a restriction on operating hours, and a variation to this was discussed with both the applicant and Environmental Services.

### **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 statutory Development Plan for Kirklees is the Local Plan (adopted 27<sup>th</sup> February 2019).

6.2 The application site is unallocated on the Kirklees Local Plan.

#### **6.3 Kirklees Local Plan (2019):**

- **LP1** – Presumption in favour of sustainable development
- **LP2** - Place Shaping
- **LP16** – Food and Drink uses and the evening economy
- **LP21** – Highways and access
- **LP51** – Protection and improvement of local air quality
- **LP52** – Protection and improvement of environment quality

#### 6.4 National Planning Policy Framework:

- **Chapter 2** – Achieving Sustainable Development
- **Chapter 9** – Retaining and town centres
- **Chapter 12** – Achieving well-designed places

#### 6.5 Supplementary Planning Guidance:

- **Highways Design Guide** Supplementary Planning Document

### 7.0 **PUBLIC/LOCAL RESPONSE:**

7.1 As a result of the initial publicity, seven objections have been received. A summary of the comments is set out below:

#### Impact on residential amenity

- No.52 is already been used for food preparation and sandwich making to distribute. The noise affects residents at all times of the day and night with vans bringing and taking food.
- No.52 has been preparing and delivering food for a long time. There are deliveries of chicken and bread at approximately 1am, 3am and 6am.
- Concern about noise during construction, noise from the air vent, the workers in the kitchen and from vehicles when loading and unloading.
- Concern about fumes from cooking outside and coming into neighbouring homes.
- Concerned about noise from vans and the air vent.
- Concern about existing deliveries in the night.
- The air vent is for cooking in the room and concern about smell to neighbouring residents.

#### Highway Safety Matters

- All surrounding roads have double yellow lines.
- Parking is an issue with yellow lines and the junction.
- Concern about extra traffic for loading/unloading.

#### Other Matters

- The plans claim it is for change of use but it is to create a kitchen in the derelict outhouse.
- The applicant is already running a fast food service (Happy Snacks) and never opens the front door shutters.
- The business does not appear to have a good hygiene certificate.
- There are already rats in the area.
- There is an issue with overgrown trees and concerned this could be a fire hazard.
- The outdoor building has only one door exit.
- The applicant is installing a gas cylinder to supply the outbuilding.

#### Amended Plans Publicity

The revised description of development to include the proposed alterations to the outbuilding and the additional plan was advertised by neighbour letter. As a result of this publicity four representations have been received. The matters raised are summarised below:

### Highway Safety

- There is no suitable access and layout in the interests of highway safety, they have vans and park on the yellow line blocking the pathway to the adjacent shop. This is affecting movements and is a big hazard to other roads users as the exit is very close to the junction.
- The bins are put for collection outside blocking the neighbouring garage door.
- Concern how it will affect parking with the constant and unpredictable timings of deliveries blocking drives and causing an obstruction.

### Other Matters

- Happy Snacks are running a business and it appears that the food safety regulations is not being followed correctly and it appears that the advice from Food Safety team regulation was not taken when starting this business.
- Question the safety of the installation of a gas cylinder.
- Do not want an increased risk of rat infestation which is highly likely as it is already an issue.
- With the use of an air vent, the issue of odours spreading in the nearby air is inevitable.

## **8.0 CONSULTATION RESPONSES:**

The following is a brief summary of consultee advice (more details are contained within the assessment section of the report, where appropriate):

### **8.1 Statutory:**

**K.C Highways Development Management** – No objections following receipt of amended plans. The revised layout shown on drawing 2019-52WS-02 shows the parking spaces amended to 2.4m wide and these are now acceptable for staff parking spaces. The bin storage area shown is also suitable for all sizes of commercial refuse containers recommended by the Kirklees Cleansing team. The position is also considered acceptable.

### **8.2 Non-statutory:**

**K.C Environmental Services** – No objections subject to conditions regarding the provision of Electric Vehicle Charging Points and the submission of details relating to odour/extract ventilation system. A condition restricting the hours of use is also advised.

## **9.0 MAIN ISSUES**

- Principle of development
- Highway Safety issues
- Residential amenity
- External alterations / Impact on Visual amenity
- Other matters
- Representations
- Conclusion

## 10.0 APPRAISAL

### Principle of development

- 10.1 The application seeks planning permission for the change of use of No.52 Wellington Street from a retail/office use to a use for the preparation and packaging of food. Planning permission is also sought for alterations to the rear outbuilding to include a small extension and installation of an air vent.
- 10.2 On first view, No.52 Wellington Street appears vacant with the principal elevation shut and secured by a roller shutter and the fascia sign advertising a former business occupier. However, a business is being operated from the building for the preparation, packaging and delivery of food. It is also proposed to use the outbuilding in the rear yard area for these purposes and the application seeks permission for the installation of a vent to this outbuilding.
- 10.3 It is noted that planning permission has been previously granted for the change of use of the premises to a hot food takeaway. Although this does not appear to have been implemented, the proposal for a food preparation business is a similar type of use. It is considered that the proposed use of the building for the preparation and delivery of food in this mixed use area just outside of the local centre of Batley would, in principle, be acceptable. This is however subject to an assessment of, amongst other things, the impact on highway safety and the impact on the amenity of occupants of neighbouring residential properties.

### Highway Safety issues

- 10.4 No.52 Wellington Street in Batley occupies a corner plot with Wellington Street running to the south of the site and Hanover Street to the west. Vehicular access to the site is provided from Hanover Street to the rear of the plot. A number of concerns have been raised in the representations received regarding the impact on highway safety. The concerns include that there is no suitable access and layout with vans parking on yellow lines creating a hazard to other roads users, concern that surrounding roads have double yellow lines and that the site exit is very close to the junction, concern about additional traffic in the area and the impact on parking with deliveries causing an obstruction.
- 10.5 This application is for the change of use from retail/office to preparation and packaging of food within an existing building and outhouse with off street delivery space. The access to the site is off Hannover Street, this is a 30mph two-way single carriageway residential access road of approximately 5.5 metre width with footways on both sides and street lighting present. There are TRO parking restrictions ('No Waiting at Any Time') around the junction with Wellington Street in order to protect visibility and access at the junction. Wellington Street has 'No Waiting' (Mon to Sat 8am to 6pm) TROs to the front of the site, 'No Waiting at Any Time' TRO markings opposite and a limited waiting parking bay to the front of a parade of shops opposite.
- 10.6 The site benefits from a previous conditional permission for a change of use to a hot food take away (planning application reference 2015/93429). It is considered by officers that the current proposals would have a reduced impact on the operation of the local highway network than the previous permission.

- 10.7 The previous permission included two parking spaces to the rear of the premises that were deemed suitable as staff parking, Highways Development Management requested that these be shown on a proposed block plan. The applicant has provided a block plan showing two spaces, each measuring 2.4m x 4.8m, which are acceptable to Highways Development Management for staff parking spaces.
- 10.8 The application as initially submitted did not include details of waste collection. The applicant has now provided details of a space for bin storage measuring 1.2m x 1.7m which is considered to be suitable for all sizes of commercial refuse containers recommended by the Kirklees Cleansing team. The location is approximately 12m from the edge of the adopted highway and would be suitable as a collection location to avoid any obstruction of the access, footway or surrounding accesses and is considered acceptable to officers.
- 10.9 Subject to the provision of the parking spaces and the bin storage and collection area, as identified on the amended site plan, the proposals would be safe from a highways perspective, in accordance with Policies LP21 and LP22 of the Kirklees Local Plan, as well as the Highways Design Guide SPD.

#### Residential Amenity

- 10.10 The site is located within a mixed commercial and residential area. The nearest neighbouring residential properties which have the potential to be affected by the proposal are those located to the north of the application site at Wards Hill Close. A number of concerns have been received regarding the impact on amenity with concerns including how the existing business is being operated with activities occurring at early hours of the day, and concerns about noise and smell. There are concerns about the hours of operation and odours.
- 10.11 The business is being operated from the building for the preparation, packaging and delivery of food, however it is also proposed to use the outbuilding to the rear for these purposes, to include the cooking of food, and the application seeks permission for the installation of a vent.
- 10.12 Environmental Services have assessed the proposal and do not raise any objections to operating the business from the existing property and the outbuilding. This is however subject to a number of conditions. Firstly, the proposed hours of use. Environmental Services recommend that no activities shall be carried out, including deliveries or dispatches, outside the hours of 0730 to 1730 Monday to Saturday and 0800 to 1700 Sundays. The applicant has raised concern about the proposed restriction to the opening hours and requested consideration be given to starting at 0600 seven days a week. They have provided the following statement:

*“It is vital for our business operations that the delivery of the ingredients is made early in the morning. This allows us to start preparing our products as soon as staff start arriving on site and ensure that our products are on the shelves of our retail customers in a timely fashion. The timings are essential for a business-like hour, as consumers tend to buy our packaged food products just before starting work and around lunch time. The delivery of ingredients is made using a small van, and the process takes less than 15min. The packaged boxed ingredients are unloaded to the premises manually by a single person and no machinery is used. I can therefore assure you that no*

*disturbance will be caused to nearby residents as a result of the delivery. The premises being located adjacent to a busy main road means that the engine noise from the delivery vehicle will be no more audible from the nearby residential premises, than the noise created by passing traffic at this time of the day”*

- 10.13 Environmental Services have considered this, however they are only satisfied for the business to operate at the earliest from 0700 Monday to Saturday in order to protect the residential amenity of occupiers of neighbouring properties. The proposed hours of operation, in accordance with the comments from Environmental Services can be secured by condition.
- 10.14 The second concern is about noise and odour. Environmental Services have recommended a condition to secure details of the installation of any kitchen extract ventilation system to include details of treatments of emissions and filters to remove odours and control noise emissions. The applicant has submitted details of an extractor that would be fitted. Environmental Services have assessed the information provided but still require details of how loud the extract system would be when heard from the nearest residential properties. Accordingly, it is still appropriate to include a condition to secure further details of the extract ventilation system. Subject to the imposition of this condition, details of noise and odour are addressed.
- 10.15 With the inclusion of the above suggested conditions, suitable mitigation measures which would reduce noise and odour pollution to an acceptable level to protect the quality of life and well-being of neighbouring people as well as the wider area would be achieved, in accordance with Policy LP52 of the KLP as well as Chapter 15 of the NPPF.

#### External Alterations / Impact on Visual Amenity

- 10.16 The proposal includes alterations to the existing outbuilding, as shown as plan Ref 2019-52 WS - 02. These include the construction of a small store area which has already been completed on site, and the provision of an extractor / vent. It is considered that the proposed construction of the store area, which is only small in scale, would preserve visual amenity subject to it being faced appropriately (officers would expect either brick facing to match the main outbuilding or, because of its small scale and unobtrusive position, a render finish), which can be secured via suggested condition. With the inclusion of such a condition, there are no objections raised by officers in regard to this extension. The matter regarding the proposed extractor / vent has been discussed in detail above and, due to the mixed use nature of the surrounding area, such equipment at the premises would not, in the opinion of officers, appear incongruous within the area.
- 10.17 Due to the minor nature of the external works, the proposals would promote good design in accordance with the aims of Policy LP24 of the KLP as well as Chapter 12 of the NPPF.



## Other Matters

- 10.18 *Air Quality* – In accordance with Government guidance on air quality mitigation, outlined within the NPPG and Chapter 15 of the NPPF, Policies LP24 and LP51 of the KLP and the West Yorkshire Low Emission Strategy Planning Guidance seeks to mitigate Air Quality harm. Given the scale and nature of the development, officers seek the provision of one electric vehicle charging point to be provided to serve the staff parking. The purpose of this is to promote modes of transport with low impact on air quality. A condition is recommended to secure this.
- 10.19 *Climate Change* – Chapter 12 of the KLP relates to climate change and states that “Effective spatial planning is an important part of a successful response to climate change as it can influence the delivery of appropriately sited green infrastructure and the emission of greenhouse gases. Planning can also help increase resilience to climate change impact through the location, mix and design of development”. This is also reflected in the NPPF as a core land use planning principle. The NPPF emphasis that responding to climate change is central to economic, social and environmental dimensions of sustainable development. This application has been assessed taking into account the requirements summarised and provides opportunity for development that is considered to meet the dimensions of sustainable development. Furthermore, the inclusion of an electric vehicle charging point to serve one of the staff parking spaces, which is recommended to be secured via condition, would contribute positively to the aims of climate change.

## Representations

- 10.20 A total of 10 letters of representation have been received in response to the initial and amended plan publicity. The concerns raised regarding the impact on residential amenity and highway safety have been addressed in detail above. In so far as other matters raised have not been addressed above, officers respond as follows:
- 10.21 The plans claim it is for change of use but it is to create a kitchen in the derelict outhouse.  
**Response:** This part of the proposed development has been assessed above and this element is considered acceptable by officers from both a visual and residential amenity perspective.
- 10.22 The applicant is already running a fast food service (Happy Snacks) and never opens the front door shutters  
**Response:** This was observed at the time of the site visit however, the application needs to be considered having regard to relevant material planning considerations, principally, policies set out in the KLP and the NPPF.
- 10.23 The business does not appear to have a good hygiene certificate / it appears that the Food Safety regulations is not being followed correctly and it appears that the advice from Food Safety team regulation was not taken when starting this business  
**Response:** It is recommended that the applicant contact the Food Safety Team of Environmental Services to discuss food safety and hygiene requirements. This is not a material planning consideration.

- 10.24 There are already rats in the area  
**Response:** Environmental Services have been part of the consultation process with this application. Pest control is a matter to be referred to the relevant department and is not a material planning consideration.
- 10.25 There is an issue with overgrown trees and concerned this could be a fire hazard / The outdoor building has only one door exit  
**Response:** Fire safety is a matter separate to the planning process.
- 10.26 Question the safety of the installation of a gas cylinder  
**Response:** This is a matter covered under separate regulation and is not a material planning consideration.
- 10.27 *Ward member comments:-* Councillor Habiban Zaman has raised issues regarding the hours of operation, and has requested a site visit to determine the impact on surrounding properties particularly the impact on elderly residents. An assessment of the proposed hours of operation and the impact on neighbouring residential properties has been considered in detail above. It is considered by officers that subject to imposing a condition that no activities shall be carried out, including deliveries or dispatches outside the hours of 0700 to 1730 Monday to Saturday and 0800 to 1700 Sundays, there would be no undue detrimental impact on the amenity of occupiers of neighbouring properties. Furthermore, details of any extract system is required to be submitted to and approved in writing by the Local Planning Authority before installation.

## 11.0 CONCLUSION

- 11.1 The proposed use of the building for the preparation and delivery of food in this mixed use area outside of the local centre of Batley is acceptable in principle. With the inclusion of appropriate conditions, as set out in the main assessment above, there would be no detrimental impact on highway safety or residential amenity.
- 11.2 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.
- 11.3 This application has been assessed against relevant policies in the development plan and other material considerations and it is considered that the development would constitute sustainable development and is therefore recommended for approval.

## **12.0 CONDITIONS (Summary list - Full wording of conditions including any amendments/additions to be delegated to the Head of Planning and Development)**

1. The development shall be begun not later than the expiration of three years
2. The development shall be carried out in complete accordance with the plans and specifications
3. No activities shall be carried out on the premises, including deliveries to or dispatches from the premises, outside the times of 0700 to 1730 Monday to Saturday and 0800 to 1700 Sundays.
4. Details of the installation and/or erection of any kitchen extract ventilation system, including details of the methods of treatments of emissions and filters to remove odours and control noise emissions to be previously approved in writing by the Local Planning Authority.
5. An electric charge point to be installed.
6. Parking and bin storage/collection area to be provided in accordance with details shown on drawing no. 2019-52WS-02.
7. Details of the external finish of the side extension on the outhouse to be submitted to and approved in writing by the Local Planning Authority.

### **Background Papers:**

#### **Website link:**

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2019%2f92381>

Certificate of Ownership B signed – Notice served on:

- 50 Wellington Street, Batley
- 130 Purlwell Lane, Batley

#### **Link to history planning application 2015/93429 :**

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2015%2f93429+>