

Name of meeting: STRATEGIC PLANNING COMMITTEE

Date: 31 March 2021

Title of report: 2020/90450 - Land at, Owl Lane, John Ormsby V C Way, Shaw Cross, Dewsbury, WF12 7RQ

Erection of a restaurant with drive thru, car parking, landscaping and associated works, including customer order displays (COD) and a play frame

The purpose of the report is to set out the reasons for refusal decided upon by Members at the Strategic Planning Committee held on 27th January 2021 and to advise members of the evidence base for each reason.

Electoral wards affected: Dewsbury East

Ward councillors consulted: No

Public or private: Public

Has GDPR been considered? Yes. There no GDPR implications.

1. Summary

- 1.1 Application ref 2020/90450 relates to the erection of a restaurant with drive thru, car parking, landscaping and associated works, including customer order displays (COD) and a play frame. Members of the Strategic Planning Committee resolved to refuse the application at the Committee meeting held on 27th January 2021, contrary to Officer recommendation.
- 1.2 This report sets out the reasons for refusal which Members of the Strategic Planning Committee decided upon at the Committee held on 27th January 2021. For each reason for refusal, Officers set out the evidence base to support each of these.

2. Site Context & Planning History

2.1



Map not to scale – for identification purposes only

- 2.2 The site comprises an area of 0.35ha and is located at the junction of Leeds Road and John Ormsby VC Way, Shaw Cross, currently characterised by scrub land and containing a number of trees. The site lies adjacent to residential properties to the east, and a detached two storey office building to the south west. The northern and western boundaries of the site adjoin the road network of Leeds Road and John Ormsby VC Way.
- 2.3 The immediate locality is characterised by residential and commercial development, with the existing commercial development having a strong presence to the south of the site
- 2.4 The relevant planning history of planning applications are illustrated in Appendix 1, contained within the previous Committee Report.

3. Reasons for Refusal

- 3.1 Members have resolved to refuse the application contrary to Officer recommendation for the following reasons:
1. *The proposed development would have a detrimental impact upon the amenity of occupiers of adjacent residential properties, by reason of noise disturbance, contrary to Policies LP 24 and LP 53 of the Kirklees Local Plan.*
 2. *The proposed development would result in an increased likelihood of anti-social behaviour, undermining the quality of life of the local community. To approve the application would be contrary to Policy LP 16 of the Kirklees Local Plan and the aims of Chapter 8 of the National Planning Policy Framework.*
 3. *The proposed development would have a detrimental impact upon the volume of traffic on the existing highway network, resulting in congestion at the junction of Leeds Road and John Ormsby VC Way. This would not be in the interests of highway safety or efficiency, contrary to Policy LP 21 of the Kirklees Local Plan*

4. *The addition of the proposed restaurant and drive thru, in an area where there are higher levels of deprivation combined with high levels of overweight or obese children and adults, would not be in the interests of ensuring healthy, active and safe lifestyles in so far as resisting the location of fast food establishments in areas of poor health, contrary to Policy LP 47 of the Kirklees Local Plan and the aims of Chapter 8 of the National Planning Policy Framework.*

4. Evidence to support the reasons for refusal

- 4.1 In relation to the above proposed reasons for refusal, Members are advised that with respect to Reasons 1-3, there would be little evidence to substantiate these at appeal. These matters are considered in turn:

Noise Disturbance

- 4.2 For this application, a noise impact assessment was submitted which detailed the potential noises that would be generated from the proposed use, assessed their likely impact on nearby residents and provided recommendations to address any issues. KC Environmental Health considered the conclusions and recommendations of this assessment to be acceptable.
- 4.3 Notwithstanding the above, since the Strategic Planning Committee on 27th January 2021, the applicant has confirmed that they would be willing to amend the hours of opening from the previously proposed 5am until midnight, 7 days a week to 6am until 11pm, 7 days a week. This would reduce the extent of night-time opening to one hour only before 'daytime' starts and can be secured by condition.

Anti-Social Behaviour

- 4.4 In respect of anti-social behaviour, there are no current issues in the area from anti-social behaviour according to West Yorkshire Police. Local Police officers have been active in the surrounding area within the community and have not highlighted any recent concerns.
- 4.5 Applicants and management for this kind of establishment are encouraged to engage with the Neighbourhood Policing Team Officers, where advice and assistance can be sought where appropriate. In addition, KC Environmental Health rarely receive complaints about noise in the context of anti-social behaviour from McDonald's sites within Kirklees including those that are close to residential properties.

Highway Safety

- 4.6 At the Strategic Planning Committee on 27th January 2021, members raised concerns regarding the potential for congestion around the Owl Lane and Leeds Road junctions as a result of the development. Based on the submitted information which has been assessed by KC Highways DM, there would be little evidence for refusing the application in respect of traffic impact on the network or congestion at the junction. In terms of traffic impact at the Shawcross junction, traffic generated by

the McDonalds restaurant/drive thru has been tested using the Council's Shawcross junction model which indicates that traffic associated with the application site can be accommodated without having a material impact on the operation of the junction. In addition, based on surveys of existing McDonalds sites, Officers are satisfied that the drive thru lane and car park can accommodate the predicted demand and servicing can be undertaken on site.

- 4.7 To summarise, in operational terms, the proposals provide sufficient capacity for deliveries, drive thru customers and parking. Officer assessment indicates that traffic generated by the development will have no material impact on the operation of the local highway network.

Public Health

- 4.8 The proposed reason for refusal based on Public Health grounds is supported by Policy LP 47 (Healthy, Active and Safe Lifestyles) of the KLP which places emphasis on the creation of an environment which supports healthy, active and safe communities and reduces inequality.
- 4.9 Since the Strategic Planning Committee on 27th January 2021, the applicant has submitted comments in relation to Members' concerns regarding public health, and those stated in representations in relation to public health and litter. In relation to this proposed reason for refusal, they state:

"We have built our strategy on three core principles: choice, information and improving the nutritional profile of existing products. That means:

- 1. Providing people with a range of food that allows them to make a choice appropriate for any occasion, whether that is a treat or a healthy everyday option.*
- 2. Providing information to help customers understand what they are eating.*
- 3. Reformulating our products to reduce saturated fat, sugar and salt, while not compromising on flavour"*

- 4.10 Members are advised that the applicant has made reference to the previous planning permission for restaurant and retail units in addition to several appeal decisions including APP/U2370/W/19/3226028 - July 2019 for McDonalds restaurants with drive-thrus in which the Inspector concluded that there was little evidence to substantiate why the proposal would have an adverse effect upon the health and well-being of local residents, particularly given the availability of healthier menu choices. Whilst previous planning history and case law are material considerations in the assessment of planning applications, in this case, based on the information before Officers, there are sufficient grounds to refuse on public health grounds.

5. Implications for the Council

- 5.1 Officers consider that there is a policy background to support a reason for refusal on public health grounds. Notwithstanding this, Members are advised that there is little evidence to support reasons for refusal 1-3. Members should consider the reasonableness of refusing the application on these grounds and the likelihood of an appeal being upheld in addition to the award of costs to the appellant.

6. Consultees and their opinions

Consultees have been asked to provide input in relation to each of the reasons for refusal. Their advice is incorporated into section 4 above.

7. Next steps

Issue the decision

8. Officer recommendations and reasons

To note

11. Cabinet portfolio holder recommendation

Not applicable

12. Contact officer

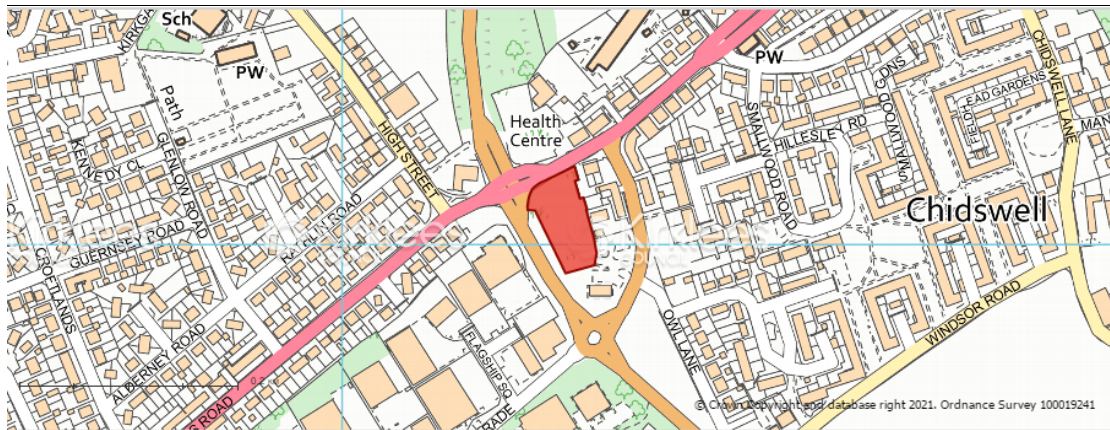
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13. Background Papers and History of Decisions

Committee Report and update from 27th Strategic Committee Report attached

APPENDIX I

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral wards affected: Dewsbury East

Ward Councillors consulted: Yes

Public or private: Public

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 brought to Strategic Planning Committee at the request of Councillor Eric Firth who states:

“I have some concerns re the traffic and the impact on local residents on Owl Lane”

1.2 The application site is located adjacent to the Leeds Road/John Ormsby VC Way Junction where a strategic transport infrastructure project is proposed as set out within the Kirklees Local Plan (Site TS5).

1.3 In addition to the above, a significant number of representations have been received as a result of site publicity.

2.0 SITE AND SURROUNDINGS:

2.1 The site comprises an area of 0.35ha and is located at the junction of Leeds Road and John Ormsby VC Way, Shaw Cross, currently characterised by scrub land and containing a number of trees. The site lies adjacent to residential properties to the east, and a detached two

storey office building to the south west. The northern and western boundaries of the site adjoin the road network of Leeds Road and John Ormsby VC Way.

- 2.2 The immediate locality is characterised by residential and commercial development, with the existing commercial development having a strong presence to the south of the site.

3.0 PROPOSAL:

- 3.1 The submitted proposals relate to the erection of a restaurant with drive thru, car parking, landscaping and associated works, including customer order displays (COD) and a play frame.
- 3.2 Access would be taken from Owl Lane to the south east, leading to the associated car park containing 38 parking spaces, and internal circulation areas.
- 3.3 The proposed restaurant building would be located on the northern part of the site with drive thru lane(s) running alongside the eastern and western elevations of the building.

4.0 RELEVANT PLANNING HISTORY (including enforcement history):

- 4.1 2020/90443 – Advertisement consent for erection of illuminated sign – pending consideration
- 2020/90444 – Advertisement consent for erection of illuminated and non-illuminated signs – pending consideration
- 2020/90445 – Advertisement consent for erection of illuminated signs and booth lettering
- 2019/20147 – Pre-application enquiry for erection of a restaurant with drive thru – advice given
- 2016/92953 – Outline application for erection of restaurant and hot food outlets – conditional outline permission
- 2015/93898 – Outline application for erection of restaurant, retail outlet and hotel – Withdrawn
- 2010/92846 – Removal of Condition 3 on previous application ref 2004/90778 for outline application for erection of hotel – refused
- 2006/92257 - Reserved Matters Application for erection of Hotel with Restaurant – approval of reserved matters
- 2004/90778 – Outline application for erection of hotel – conditional outline permission

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

5.1 Through the course of the application, negotiations have taken place with respect to highway matters specifically relating to the proposed Leeds Road/John Ormsby VC Way junction improvements, whilst additional and amended information has been received following consultation responses from KC Environmental Health and KC Ecology.

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 27th February 2019).

6.2 Kirklees Local Plan (2019):

The site is allocated as Priority Employment Area on the Local Plan.

LP1 – Presumption in favour of sustainable development

LP2– Place shaping

LP8 – Safeguarding Employment Land and Premises

LP13 – Town Centre Uses

LP16 – Food and drink uses and the evening economy

LP19 – Strategic Transport Infrastructure

LP20 – Sustainable Travel

LP21 – Highways and Access

LP22 – Parking

LP24 – Design

LP27 – Flood Risk

LP28 – Drainage

LP30 – Biodiversity and Geodiversity

LP33 - Trees

LP34 – Conserving and enhancing the water environment

LP47 – Healthy, Active and Safe Lifestyles

LP52 – Protection and improvement of environmental quality

LP53 – Contaminated and Unstable Land

6.3 Supplementary Planning Guidance / Documents (SPD):

- Highway Design Guide Supplementary Planning Document
- Draft Hot Food Takeaway SPD - The Council started to prepare a Hot food Takeaway SPD to consider the location and impact of new takeaways and add further guidance to Local Plan policies. The preparation of this guidance is on hold due to the relaxation of planning restrictions on restaurants providing takeaway services in the Covid-19 situation and is likely to be revisited in late 2021. The

emerging SPD carries no weight in decision making at this stage and Local Plan policies should continue to be used to determine applications for new Hot Food Takeaways.

6.4 National Planning Guidance:

Chapter 6 – Building a strong, competitive economy

Chapter 7 – Ensuring the vitality of town centres

Chapter 8 – Promoting health and safe communities

Chapter 9 – Promoting sustainable transport

Chapter 12 – Achieving well-designed places

Chapter 14 – Meeting the challenge of climate change, flooding and coastal change

Chapter 15 – Conserving and Enhancing the Natural Environment

6.5 Climate Change

On 12 November 2019 the Council adopted a target for achieving “net zero” carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system, and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan pre-dates the declaration of a climate emergency and the net zero carbon target, however it includes a series of policies which are used to assess the suitability of planning applications in the context of climate change. When determining planning applications the Council will use the relevant Local Plan policies and guidance documents to embed the climate change agenda.

7.0 **PUBLIC/LOCAL RESPONSE:**

7.1 The application was publicised by site notice and neighbour notification letter. 70 representations were received in relation to the initial round of site publicity. Of these, 60 representations were in objection to the application, whilst 10 were in support or a general comment. The objections received are summarised as follows:

Residential Amenity

- The development would result in noise disturbance
- The development would result in odour
- The speeding up and down Leeds Road and Owl Lane on an evening by anti social drivers would likely increase with an additional place to congregate in McDonalds car park
- The development would result in additional air pollution
- The development will attract vermin
- This is a residential area, not commercial
- Do not want high walls blocking sunlight to neighbouring houses

Visual Amenity

- The appearance of the development would not be acceptable
- The corner could be further developed as open space as per on the opposite side of the road

Highway Safety

- Current traffic management is bad at peak times; this development will add to that
- Concerns about highway and pedestrian safety around the site access
- The location would be more suitable to a more traditional restaurant without a drive through and hence less traffic and less of a negative environmental affect in the local area
- Proposed car parking provision is inadequate

Drainage/Flood Risk

- The site is currently green and permeable which undoubtedly helps ensure all precipitation does not run off. The roundabout is often flooded during periods of any persistent rain

Other Matters

- The development would attract litter
- There is a McDonalds down the road in Wakefield
- McDonalds should be located in the Town Centre to encourage people to visit and shop there
- The development promotes fast food in an area close to several primary schools and sporting venues
- The development will have a negative impact on the proposed plans for future residential development in the area
- The development would have a detrimental impact upon local cafes in the area
- It would be better if the Council encouraged alternative proposals to serve the planned increase in homes in this area; adding some form of infrastructure would be more beneficial, e,g shops, post office, doctors surgery, chemist, park.
- Refer to KC Healthy Eating Initiative
- House values will decrease
- Was previously advised that the site was earmarked for a hotel development and would never be used for a fast food takeaway and restaurant

7.2 The general/supporting comments received in response to site publicity are summarised as follows:

- There isn't much around this area; consider that they will get a lot of custom, especially on game days
- Would be nice to have a new business in the area that takes the place of
- the overgrown wasteland that has been there for years.

- The development would create new jobs and opportunities for young people in the area
- Healthy eating is the pure responsibility of individuals and not the responsibility of the Council and/or the proposer
- Support the proposal; suggest that consideration should be given to resurfacing the surrounding approach roads due to the increase in traffic resulting from the development

7.3 Although there is no statutory requirement under the DMPO to re-consult on planning applications, a further consultation on additional/amended details was undertaken by letter dated 30 November 2020 for a period of 14 days. A further 12 representations were received in response (11 in objection and one in support). The comments received echo those set out above.

7.4 The Dewsbury East ward members were notified of the application. Councillor Eric Firth responded to state *"I have some concerns re the traffic and the impact on local residents on Owl Lane"*. Councillor Firth requested a Committee decision, should Officers be recommending approval of the application.

8.0 CONSULTATION RESPONSES:

8.1 Statutory:

KC Highways DM: No objections

KC Environmental Services: Recommend imposition of conditions

KC Trees: No objections subject to imposition of condition

8.2 Non-statutory:

Yorkshire Water: No objection subject to imposition of condition

KC Planning Policy: No objection

KC Ecology: Response awaited in relation to most recent information submitted in January 2020.

West Yorkshire Police Architectural Liaison Officer: Recommends crime prevention measures to be incorporated into the development

9.0 MAIN ISSUES

- Principle of development
- Urban design issues
- Residential amenity
- Highway issues
- Landscape issues
- Drainage issues
- Representations
- Other matters

10.0 APPRAISAL

Principle of development

10.1 The site is allocated as part of a larger Priority Employment Area (PEA28) on the Kirklees Local Plan (KLP), and therefore consideration has to be given to Policy LP8 of the Kirklees Local Plan. Priority Employment Areas house established businesses and industry sites that warrant protection from changes of use.

10.2 Policy LP 8, criterion 1, of the KLP applies in this case:

“Proposals for development or re-development for employment generating uses (as defined in the Glossary) in Priority Employment Areas will be supported where there is no conflict with the established employment uses (as defined in the Glossary) in the area. In instances where the site is out of centre and the proposal includes main town centre uses then policy LP 13 will need to be applied”.

10.3 The proposed restaurant use is an employment generating use, as defined in the glossary ‘*And enterprises which provide jobs, for example, retail, hotel, assembly and leisure and certain non-residential Sui Generis uses (such as clubs, cash and carry businesses and builders merchants)*’. Therefore, as long as there will be no conflict between the proposed use and the existing employment uses in the area, the proposal would comply with Policy LP 8 of the KLP.

10.4 In this instance, the proposal is an employment generating use (with 65 jobs proposed) and it is considered that there would be no conflict with existing business uses. As such, it is considered that the proposed development would accord with Policy LP 8 of the KLP.

Sequential Test

10.5 The proposal comprises a main town centre use on a site located outside of the town centre of Dewsbury. In accordance with Policy LP13 of the KLP, main town centres uses shall be located within defined centres. Proposals for main town centre uses located outside of the defined centre boundaries require the submission of a Sequential Test to demonstrate that there are no suitable sites within existing centres. Main town centre uses shall be first located in the defined centres, then edge of centre locations and only if there are no suitable sites shall out of centre locations be considered.

10.6 As required, the applicant has submitted a supporting statement which includes a sequential test for the proposed development. The applicant sets out their business model and parameters for the sequential test which are;

- approx. 0.3ha of available space
- space required to successfully operate including sufficient parking to meet the operational needs of the proposal.
- Generally, a single drive-thru requires 20,000 passing traffic movements for a roadside location or other ‘attractors’.

- 10.7 The catchment for the proposal is focused on Dewsbury Town Centre and around the wider surrounding area to the north, east and west of the centre. The applicant states that there are no suitable sites within or on the edge of Dewsbury Town Centre. Bradford Road to Batley Town Centre and to the north has also been considered in addition to Halifax Road to the north of Dewsbury Town Centre and Savile Road and Thornhill Road to the south. No sequentially preferable sites have been identified.
- 10.8 The applicant also refers to supermarket car parks and that none have available or surplus land or car parks in the wider area. There is currently a planning application (2019/94107) for the erection of a drive-thru coffee shop in the car park of Asda at Mill Street West Dewsbury. The site area is 0.27 ha and this is in an edge of centre location. The application has been made by Euro Garages Ltd in conjunction with Asda stores for a new coffee shop drive thru. It is considered therefore that this site is not available due to the proposed development.
- 10.9 The Council is not aware of any sequentially preferable sites in, on the edge or in accessible out of centre locations within the catchment that would be suitable for the proposal. Therefore, the sequential test has been passed.
- 10.10 Outline planning permission was previously granted on this site for a restaurant and hot food outlets in May 2017. This has now lapsed.
- 10.11 The proposal is located immediately adjacent to a highway junction where road improvements have been identified in the Local Plan on the Mirfield to Dewsbury to Leeds and North Kirklees growth zone transport scheme site TS5.
- 10.12 Policy LP19 of the KLP states that proposals that may prejudice the future of development of identified highways improvements will not be permitted. The details of Site TS5 are set out in the Local Plan allocations and designations document. In relation to the Shaw Cross junction, it states that;
- ‘There will be improvements along the A653 corridor between Dewsbury and Leeds, in particular, at the junction of the A653 and B6128 (Shaw Cross) to facilitate improvements to bus and car journey times between Dewsbury and Leeds proving more efficient journeys to Leeds city centre. White Rose, Aire Valley and the M62 corridor and to accommodate a major mixed-use allocation Chidswell.’*
- 10.13 The proposed development must not prejudice the future development of this identified highways improvement. Negotiations have taken place in respect of this matter throughout the course of the application and this is expanded upon below.

Urban Design issues

- 10.14 The application site comprises an area of scrubland containing a number of trees. The immediate locality is characterised by residential and commercial development, with the existing commercial development having a strong presence to the south of the site. Neighbouring residential properties are located to the east of the site, predominantly of terraced stone construction, with some examples of later detached properties.
- 10.15. The proposed restaurant would be single storey in scale, faced in a combination of materials comprising mixed timber effect, contemporary grey block and stone effect panels in addition to a glazed customer area addressing the frontage of the site. The drive-thru element would be located on the north western part of the site.
- 10.16 There are no objections to the proposed design of the building which would preserve the visual amenity of this mixed use area which is not characterised by one particular built-form/use of materials.
- 10.17 Some areas of landscaping are proposed along the boundaries of the site. It is considered that these areas would add some visual interest within the site and are welcomed.
- 10.18 In summary, the proposals are considered acceptable from a visual amenity perspective and would accord with the aims of Policy LP24 of the KLP and chapter 12 of the NPPF.

Residential Amenity

- 10.19 Policy LP16 of the KLP states proposals for food and drink uses should take into account the impacts of noise, general disturbance, fumes, smells, litter and late night activity, including those impacts arising from the use of external areas. The surrounding area is a mixed use area with the nearest neighbouring residential properties being located to the east of the site: 732 -738 Leeds Road, and 18-18A Owl Lane.
- 10.20 It should be noted that a previous outline permission was granted in 2017 for restaurant and hot food outlets. This has now lapsed, although it established at the time that a similar use would be compatible with residential development, subject to appropriate mitigation.
- 10.21 No specific details have been supplied in respect of the proposed hours of opening to customers. Whilst it is noted that a number of developments incorporating Drive-thrus may operate 24 hours a day, in this instance, due to the presence of existing residential properties to the east, a 24 hour operation would not be considered to be in the interests of residential amenity. As such a specific condition is necessary to restrict the hours of opening to customers (05:00 until midnight on any day) with a separate condition relating to hours of deliveries (09:00 until 22:00 Monday to Saturday). The applicant's agent has confirmed their agreement to the recommended conditions, should approval be granted.

Noise and Odour

- 10.22 The site is located on a busy junction where some existing noise from road traffic will currently be experienced by residents adjacent the site, however the proposed development would introduce an element of additional noise and odour. Commercial cooking odour in particular will be introduced into the area where it is not currently experienced. A Noise Impact Assessment and Odour Control Assessment have therefore been submitted as part of the application.
- 10.23 The submitted Noise Report makes an assessment of the main noise sources at the site taking into consideration the noise attenuation that will be provided by a 4.6m high acoustic barrier to be installed along part of the site boundary, which was also proposed at the time of the 2017 approval (and formed the basis of a planning condition). The Report also considers the impact of noise from external plant, vehicles within the car park, noise from car doors slamming, in addition to deliveries which are expected to occur around 3 times a week with an approximate 30 minute duration. The report predicts that, at nearby properties, the rating noise level from these deliveries will be less than the background noise levels and will therefore have no more than a low impact.
- 10.24 KC Environmental Health consider that the Noise Report makes a satisfactory assessment of the likely noise from the site and the impact that noise will have on nearby noise sensitive premises. Conditions, in line with the conclusions of the above-mentioned Noise Assessment and Response Statement, are necessary to ensure that noise from the site continues to be effectively controlled, in accordance with Policies LP 16 and LP 52 of the KLP and Chapter 15 of the NPPF.
- 10.25 With respect to odour, the submitted Odour Assessment includes a risk assessment based on the DEFRA and EMAQ Guidance on 'Control of Odour and Noise from Commercial Kitchen Exhaust Systems'. The overall odour risk rating of the proposed restaurant has then been used to determine the level of odour control to be installed, which indicated that a very high level of odour control was required. The report details the different types of filter that are to be installed, to remove grease and odours and the maintenance schedule for each of the corresponding components. The report also states that the kitchen exhaust will terminate at the highest point of the building, exiting via an un-restricted vertically high velocity discharge terminal to provide the effective dispersal to atmosphere. KC Environmental Health consider the content and conclusions of the report to be acceptable, subject to the imposition of a condition to ensure that odour from the site continues to be effectively controlled, in accordance with Policies LP16 and LP 52 of the KLP and Chapter 52 of the NPPF.
- 10.26 A Construction Management Plan has been submitted by Glanville (Ref:MD4190299/CP/013) (Dated 7th September 2020). This report details the measures that are to be implemented to control, noise, dust, site security and hours of working during the construction phase. Deliveries and dispatches to and from the site are to be programmed to be as efficient as possible to minimise vehicle movements and journey distances to reduce the impact of the development on the amenity of neighbouring residents. This can be controlled by condition.

- 10.27 With regard to the built form of the development, due to the scale and siting of the building relative to the neighbouring dwellings, in addition to the separation distance that would be retained between the proposed building and the residential properties, there would be no undue harm caused to the residential amenity of these occupants by virtue of either overbearing or overlooking impact, in accordance with the aims of Policy LP24 of the KLP.
- 10.28 To summarise, subject to the inclusion of appropriate conditions, the proposals are considered acceptable from a residential amenity perspective, in accordance with policies LP16, LP24 and LP52 of the KLP as well as Chapter 15 of the NPPF.

Highway issues

- 10.29 The site is located directly south east of the signalised junction of the A653 Leeds Road and the B6128 (Challenge Way to the north of the junction and John Ormsby VC Way to the south of the junction). Access to the site is from Owl Lane via an existing adopted access road.
- 10.30 The application is supported by a Transport Statement prepared by ADL Traffic and Highways Engineering Ltd.
- 10.31 The proposed layout includes a total of 38 No. car parking spaces, inclusive of 2 no. accessible bays, 4 no. electric vehicle charging point (EVCP) and 2 no. Grill Bays, with provision for 4 no. sheltered cycle stands for 8 no. cycle parking and 4 no. Motorcycle bays.
- 10.32 Pedestrian access to the restaurant would be from the access road and a further point of access for pedestrians is proposed from John Ormsby VC Way at the north west corner of the site, providing access to the store via a zebra crossing across the drive thru lane, providing direct access to the patio area.
- 10.33 The applicant states that Restaurants such as this typically receive three deliveries per week. On the day of the delivery the GPS system will automatically email the restaurant 30-minutes prior to the vehicle's arrival. Staff can then prepare for the delivery arrival and cone off the delivery vehicle loading area. The goods are delivered by articulated lorry, typically 16.5m in length. This is typically parked for between 15 minutes – 1 hour.
- 10.34 Refuse collection would be collected by a private contractor 3 times per week and would occur outside of peak hours.
- 10.35 A stage 1 Road Safety Audit has been undertaken for the site access junction from Owl Lane and internal layout and this has not highlighted any issues that cannot be resolved at the detailed design stage. The proposed site access and internal layout arrangements are considered acceptable and in accordance with Policies LP 21 and LP 22 of the KLP.

Junction Improvements

- 10.36 The application site is located immediately adjacent to a highway junction where road improvements have been identified in the KLP on the Mirfield to Dewsbury to Leeds and North Kirklees growth zone transport scheme site TS5.
- 10.37 Policy LP 19 states that proposals that may prejudice the future of development of identified highways improvements will not be permitted. The details of Site TS5 are set out in the Local Plan allocations and designations document. In relation to the Shaw Cross junction, it states that;

'There will be improvements along the A653 corridor between Dewsbury and Leeds, in particular, at the junction of the A653 and B6128 (Shaw Cross) to facilitate improvements to bus and car journey times between Dewsbury and Leeds proving more efficient journeys to Leeds city centre, White Rose, Aire Valley and the M62 corridor and to accommodate a major mixed-use allocation Chidswell.'

- 10.38 The applicant has recently submitted an amended site layout which takes the above highways improvements into account. This has been produced following negotiation with applicant's highways consultant and KC Highways DM. KC Highways DM have been re-consulted on this and raise no objections, as the proposed highway improvement works fall within land outside of the applicant's red line boundary. The proposed development would not prejudice the future development of these highway improvement works, in accordance with Policy LP 19 of the KLP. Furthermore, Officers consider that traffic associated with the proposed McDonalds will not have a material or severe impact on the operation of the local highway network.

Landscape Issues

- 10.39 The application is accompanied by a Landscape Maintenance and Management Plan and Landscape Plan, which feeds into the Biodiversity Enhancement Plan. A condition would be necessary, should permission be granted, requiring the development to be carried out in accordance with the submitted information, and thereafter retained for a period of 5 years.

Flood Risk and Drainage issues

- 10.40 The site is located within Flood Zone 1 and therefore at low risk of flooding.
- 10.41 The applicant has submitted a Drainage Statement which states that
- a) foul water will discharge to public combined sewer in Owl Lane pumped at 2 litres/second with the utilisation of grease traps;
 - b) sub-soil conditions do not support the use of soakaways;
 - c) the site is remote from watercourse; and
 - d) as a result, surface water will discharge to public combined sewer via storage with restricted discharge of 2.2 litres/second

10.42 On the basis of the above, the applicant has demonstrated that they have considered the hierarchy of sustainable drainage, and as a result, the proposals would accord with Policy LP 28 of the KLP.

Representations

10.43 A total of 82 representations were received in relation to this application. The comments in support are noted at Paragraph 7.2. The issues raised in the objections are addressed as follows:

10.44 Residential Amenity

- The development would result in noise disturbance

Response: The application is accompanied by a Noise Assessment which

considers the impact of noise from external plant, vehicles within the car park, noise from car doors slamming, in addition to deliveries which are expected to occur around 3 times a week with an approximate 30 minute duration. The submitted report has been assessed by KC Environmental Health who conclude that the report makes a satisfactory assessment of the likely noise from the site and the impact that noise will have on nearby noise sensitive premises. Conditions, in line with the conclusions Noise Assessment and Response Statement, are considered necessary to ensure that noise from the site continues to be effectively controlled

- The development would result in odour

Response: The application is accompanied by an Odour Control Assessment, the conclusions of which are accepted by KC Environmental Health. A condition is recommended to ensure that the kitchen extract system is installed in accordance with the details contained within the Odour Control Assessment.

- The speeding up and down Leeds Road and Owl Lane on an evening by anti social drivers would likely increase with an additional place to congregate in McDonalds car park.

Response: This existing issue is noted. The West Yorkshire Police Architectural Liaison officer has made recommendations regarding the development with respect to site security and surveillance.

- The development would result in additional air pollution

Response: As set out within the 'Other Matters' section of the report, provision is included within the proposed site layout for the installation of electric vehicle charging points which would contribute to meeting the aims of the West Yorkshire Low Emissions Strategy.

- The development will attract vermin

Response: The application is accompanied by a refuse storage and recycling statement and litter management plan. Refuse is proposed to be stored within a corral and covered refuse store in addition to regular litter patrols daily.

- This is a residential area, not commercial

Response: The area in which the application site is located is considered to be a mixed use area comprising both residential and commercial uses.

- Do not want high walls blocking sunlight to neighbouring house

Response: The proposals include the provision of an acoustic fence part way along the eastern boundary to protect adjacent occupiers from noise disturbance. This would particularly relate to 18 and 18a Owl Lane. This same arrangement was considered acceptable at the time of granting the previous permission in 2017. The fence is located to the side of the dwellings and not at affecting their front or rear aspects. These 2 dwellings have very little external amenity space, and were built next to an industrial location. As such, whilst visually the height of the fence is unusual, the noise protection it would afford in this case is considered to outweigh the impact resulting from its height.

10.45 Visual Amenity

- The appearance of the development would not be acceptable

Response: This is addressed within the visual amenity section of the report.

- The corner could be further developed as open space as per on the opposite side of the road

Response: The site is allocated as part of a wider Priority Employment Area where the principle of employment generating uses is considered to be acceptable.

10.46 Highway Safety

- Current traffic management is bad at peak times; this development will add to that

Response: The application has been assessed by KC Highways DM who consider the highways impacts of the development to be acceptable.

- Concerns about highway and pedestrian safety around the site access

Response: A Road Safety Audit focusing on the site access and internal layout of the site has been undertaken, to which KC Highways DM raise no objections

- The location would be more suitable to a more traditional restaurant without a drive through and hence less traffic and less of a negative environmental affect in the local area

Response: : The application has been assessed by KC Highways DM who consider the highways impacts of the development to be acceptable.

- Proposed car parking provision is inadequate

Response: The parking provision proposed to serve the development is considered to be acceptable from a highways perspective.

10.47 Drainage/Flood Risk

- The site is currently green and permeable which undoubtedly helps ensure all precipitation does not run off. The roundabout is often flooded during periods of any persistent rain

10.48 Other Matters

- The development would attract litter

Response: The application is accompanied by a refuse storage and recycling statement and litter management plan which sets out details of the method of storage and removal of refuse, and frequency and extent of litter patrols around the site and its surroundings. This states that the Management of the Restaurant are responsible for reviewing and updating the plan and recording litter patrols.

- There is a McDonalds down the road in Wakefield

Response: This is noted

- McDonalds should be located in the Town Centre to encourage people to visit and shop there

Response: The applicant has demonstrated that they have undertaken the sequential test and this is addressed within the report

- The development promotes fast food in an area close to several primary schools and sporting venues

Response: This is noted, however the site is located within a priority employment area and therefore also in close proximity to industrial development which it could also be expected to serve.

- The development will have a negative impact on the proposed plans for future residential development in the area

Response: The nature of the proposed development is considered to be acceptable on this land which is allocated as part of a wider Priority Employment Area

- The development would have a detrimental impact upon local cafes in the area

Response: This is noted, however perceived competition between similar uses is not a material planning consideration.

- It would be better if the Council encouraged alternative proposals to serve the planned increase in homes in this area; adding some form of infrastructure would be more beneficial, e.g shops, post office, doctors surgery, chemist, park.

Response: The nature of the proposed development is considered to be acceptable on this land which is allocated as part of a wider Priority Employment Area

- House values will decrease

Response: This is not a material planning consideration

- Was previously advised that the site was earmarked for a hotel development and would never be used for a fast food takeaway and restaurant

Response: Each application is assessed on its own merits, having regard to the Development Plan and policies contained within it. The Council can only assess the suitability of a proposal at the time it is put forward.

Other Matters

10.49 Contaminated Land

The site located within a Low Risk Area as defined by the Coal Authority, with respect to coal mining legacy, however is identified on the Council's mapping system as potentially contaminated land due to its previous uses relating to mining, colliery tipping and refuse/slag heap. The applicant has submitted a combined Phase I and Phase II Ground Investigation Report in respect of the development.

- 10.50 Whilst KC Environmental Health generally agree with the Phase I element of the submitted report, they consider the Phase II element to be insufficient and as such, conditions are recommended with respect to further site investigations and remediation. This would ensure that the development accords with Policy LP 53 of the KLP and Chapter 15 of the NPPF.

Air Quality

- 10.51 Guidance set out within the NPPF and the West Yorkshire Low Emissions Strategy (WYLES) seeks to encourage the use of sustainable forms of transport including ultra-low emission vehicles, the use of such vehicles in turn help to improve air quality. Provision is included within the site layout for the provision of electric vehicle charging points, and it would be reasonable to impose a condition, should permission be granted, requiring the retention of these, in accordance with the aims off the West Yorkshire Low Emission Strategy.

Crime Prevention Issues

- 10.52 The West Yorkshire Police Liaison Architectural officer raises no objections to the proposed scheme. They make a number of recommendations regarding external lighting and surveillance which will be made available to the applicant. The proposal is considered to comply with the aims of chapter 8 of the NPPF in that crime and disorder, and the fear of crime, would not undermine the quality of life or community cohesion (paragraph 91 of the NPPF).

Ecology

- 10.53 The site is located within the Kirklees Wildlife Habitat Network (KWHN) and therefore provides ecological connectivity to the wider landscape. Although development within the KWHN is not precluded, development is required to "*safeguard and enhance the function and connectivity*" and

“establish additional ecological links to the Kirklees Wildlife Habitat Network where opportunities exist” in accordance with Local Plan Policy LP30.

- 10.54 A Biodiversity Enhancement Plan has been submitted with the application, produced in conjunction with the Landscape Maintenance and Management Plan and Landscape Plan. The applicant was asked to provide additional information to mitigate and enhance the KWHN and achieve a net gain in biodiversity. Some information has been recently received and the Council’s Ecology officer has been re-consulted, with their final comments awaited.

Trees

- 10.55 There are no objections in principle to the development. Whilst the trees shown to be retained are not formally protected, Officers consider that they do contribute to the visual amenity of the area. On this basis, Officers consider that the imposition of a condition is necessary, should permission be granted, requiring a scheme of replacement planting, in the event of those trees being removed, in accordance with Policy LP 33 of the KLP.

11.0 CONCLUSION

- 11.1 In summary, on the basis of the evidence provided it is considered that the sequential test for the location of retail businesses has been met and there are no objections in principle to the proposed siting of a restaurant with drive thru lane in this location. The proposal will provide an anticipated 65 jobs and will support economic growth in accordance with Chapter 6 of the NPPF. There would be no detrimental impact on highway safety, visual amenity or residential amenity, subject to the imposition of conditions.
- 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. 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 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. Time scale for implementation (three years)
2. Development to be carried out in accordance with approved plans
3. Samples of facing and roofing materials to be submitted
4. Submission of Phase II Intrusive Site Investigation Report
5. Submission of Remediation Strategy
6. Implementation of Remediation Strategy
7. Submission of Validation Report
8. Control of noise from fixed plant and equipment

9. Control Hours of opening for customers (05:00 until midnight)
10. Control Hours of use for deliveries (09:00 until 20:00 Mondays to Saturdays)
11. External Artificial Lighting Scheme to be submitted
12. Development to be carried out in accordance with submitted Noise Assessment
13. Development to be carried out in accordance with submitted Odour Assessment
14. Installation of Electric Vehicle Charging Points
15. Development to be carried out in accordance with submitted Drainage Statement
9. Car Park to be laid out, surfaced and drained
10. Implementation of the Construction Management Plan
11. Development to be carried out in accordance with submitted Landscape Maintenance and Management Plan/Landscape Plan
12. Development to be carried out in accordance with Biodiversity Enhancement Plan
13. Scheme of replacement planting to be submitted
14. Erection of acoustic fence along eastern boundary in accordance with submitted details

Background Papers:

Application and history files.

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2020%2f90450>

Certificate of Ownership – Certificate B signed: 10 February 2020

KIRKLEES METROPOLITAN COUNCIL

PLANNING SERVICE

UPDATE OF LIST OF PLANNING APPLICATIONS TO BE DECIDED BY

STRATEGIC PLANNING COMMITTEE

27 JANUARY 2021

Planning Application 2020/90450 Item 14 – Page 235

Erection of restaurant with drive thru, car parking, landscaping, play frame, customer order displays and associated works

land at, Owl Lane, John Ormsby V C Way, Shaw Cross, Dewsbury, WF12 7RQ

7.0 PUBLIC/LOCAL RESPONSE

Since the publication of the Committee Report, one additional representation has been received. The comments received are summarised as follows:

- The development will make existing traffic problems worse
- The development will result in increased noise pollution
- The development will result in nuisance in the evenings
- The development will encourage rats if there is no rubbish control
- The site is located on a flood plain; concern over where the excess water will go

The concerns raised have been addressed in the report. With respect to the matter of flooding, the site is not located on a flood plain it is in Flood Zone 1 which is the most preferable from a flood risk perspective.

8.0 CONSULTATION RESPONSES

Following submission of revised and additional information, the following final consultation responses have been received from consultees:

KC Ecology: No objections subject to all works being carried out in accordance with the revised Biodiversity Compensation and Enhancement Plan, Landscape plan and maintenance regime

KC Highways DM: Conditions relating to layout, access and parking, retaining walls, and a schedule of the means of access to the site for construction traffic are recommended.

KC Public Health have been consulted on the application and have provided the following comments:

KC Public Health: KC Public Health has developed a tool which will support the decision-making process for new applications. The tool uses a range of local data in order to assess which areas have multiple risk factors for obesity. Postcodes are scored against each of these indicators. KC Public Health object to the application, and recommend that if the application is granted, the business is referred for further support from the Kirklees Food Initiatives and Nutrition Education (FINE) team:

Officer Response:

Policy LP 47 (Healthy, Active and Safe Lifestyles) of the KLP places emphasis on the creation of an environment which supports healthy, active and safe communities and reduces inequality. Whilst the development would serve the immediate locality, it is also sited within a location aimed at passing trade and therefore customers who live outside of the local area too. In addition, it is noted that within the applicant's supporting statement, they set out the ways in which their food offer has changed in recent years, to provide a range of food to allow customers a choice; providing calorie information, and reformulating existing items on the menus. They state that 54% of the menu is classed as non HFSS (not high in fat, salt or sugar) and 89% of items on their core food and drink menu contain under 500 calories. On the basis of these factors, Officers consider that on balance the proposed development to be acceptable, in relation to Policy LP47.