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

**HEAVY WOOLLEN PLANNING SUB-COMMITTEE**

**Date: 02-Sep-2021**

**Subject: Planning Application 2021/91052 Use of premises for sale of used cars 105, Warren Street, Savile Town, Dewsbury, WF12 9AS**

**APPLICANT**

L M Vladuleanu

**DATE VALID**

12-Mar-2021

**TARGET DATE**

07-May-2021

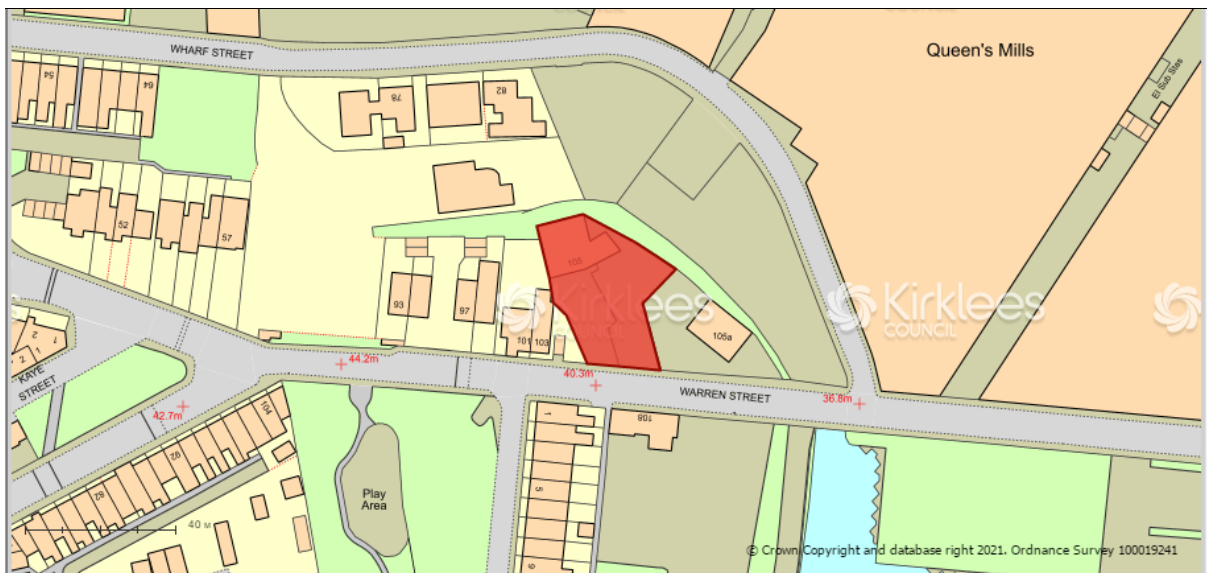
**EXTENSION EXPIRY DATE**

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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: Dewsbury South**

**Ward Councillors consulted: No**

**Public or private: Public**

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**RECOMMENDATION: REFUSE**

1. The use of the application site for car sales would result in the intensification of use of the highway, by virtue of additional demand for on-street parking. This would further exacerbate existing highway safety issues within the vicinity of the site. The proposed development would therefore fail to ensure a safe and efficient flow of the highway network contrary to Policy LP21 of the Kirklees Local Plan and Chapter 9 of the National Planning Policy Framework.

## **1.0 INTRODUCTION**

- 1.1 The application has been referred to the Heavy Woollen Planning Sub Committee due to the number of representations received. 32 representations were received on application 2021/91052. 31 representations were received on application 2021/91053. This is in accordance with the Scheme of Delegation set out in the Constitution.

## **2.0 SITE AND SURROUNDINGS**

- 2.1 The application site relates to 105 and 105a Warren Street, Savile Town, Dewsbury. Together these units cover 1500m<sup>2</sup> with no.105 covering 920m<sup>2</sup> and 105a covering 580m<sup>2</sup>. The site comprises an office and a garage on each unit, with car sales area to the front.
- 2.2 The site is on two levels, with both levels having access onto Warren Street. The sales pitch is part of the larger, former mill site, which has been divided into two smaller sites, both of which are used for car sales. The site was previously used as a manufacturing premises.
- 2.3 The site is unallocated on the Kirklees Local Plan. The eastern most point of the application site is set 25m away from an allocated primary employment area (PEA 30).

## **3.0 PROPOSAL**

- 3.1 The proposal is for the change of use to car sales premises. The proposals are retrospective, and the application was received following an enforcement complaint.

3.2 The buildings on the site are indicated as being used for a garage and car sales office.

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

4.1 87/00865 Extension to office/WC. Approved.

87/01551 Extension to office, canteen and WC. Approved.

95/92879 Erection of extension and alterations to factory. Refused.

96/91158 Erection of extension and alterations to factory. Approved.

2004/92638 Erection of two storey extension to existing factory and toilet block. Approved.

2008/90895 change of use from former petrol filling station to vehicle hire depot. Approved.

2008/91530 Change of use from storage to car valeting business. Refused (adjacent site 105a Warren Street).

2019/91226 and 2019/92001 Change of use to car sales. Refused due to the submission of insufficient information.

4.2 Comp/18/0302. Alleged material change of use from light industrial to car sales.

Comp/18/0300. Alleged material change of use from light industrial to car sales (adjacent site 105a Warren Street).

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

5.1 No amendments have been sought.

#### **6.0 PLANNING POLICY:**

6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications be 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).

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

6.2 LP1 Presumption in favour of sustainable development  
LP21 Highway safety and access  
LP22 Parking  
LP24 Design  
LP28 Drainage  
LP51 Protection and improvement of local air quality  
LP52 Protection and improvement of environmental quality

## National Planning Guidance:

### 6.3 National Planning Policy Framework (NPPF)

Chapter 6 - Building a strong, competitive economy.

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.

## Supplementary Planning Guidance / Documents:

### 6.4 Highways Design Guide Supplemental Planning Document

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

7.1 The application was advertised by neighbour notification letters. Final publicity expired on 30<sup>th</sup> April 2021. 63 representations were received across the applications, all of which were against the proposal. It should be noted that 47 of the representations received were the same letter submitted by different individuals. Other representations were also duplicated across both applications, meaning 6 differently worded representations were received in total. These representations have been summarised as follows:

### 7.2 Highway Safety

- The proposed use intensifies the highway to dangerous levels in a setting nearby to a school, GP practice, a place of worship and in a residential area.
- The additional vehicles cause sight issues for vehicles and pedestrians on Warren Street and Scarborough Street.
- The use exacerbates parking issues on Warren Street.

### 7.3 Residential Amenity

- Noise and disturbance from the use, including the noise from vehicles and hours of operations harms the amenity of dwellings nearby.

### 7.4 Non-material matters

- Legality of vehicles at the site.
- The retrospective nature of the application.
- 'attitudes and habits' of the tenants.
- Inconsiderate parking.

## **8.0 CONSULTATIONS RESPONSES**

### 8.1 **Statutory:**

KC Highways Development Management: No objections, subject to a Traffic Regulation Order undertaken under a s106 and an associated condition, in case the TRO application is not successful.

Canal and River Trust: No comment.

KC Environmental Health: No objections, subject to conditions regarding electric vehicle charging points, lighting, noise and hours of use.

## 8.2 **Non-statutory:**

KC Enforcement: Provided advice regarding the lawfulness of conditions to mitigate highway impacts.

## 9.0 **MAIN ISSUES**

- Principle of Development
- Visual Amenity
- Residential Amenity
- Highway Safety
- Drainage
- Carbon Budget
- Lighting
- Representations

## 10.0 **APPRAISAL**

### Principle of Development

- 10.1 Policy LP1 of the Kirklees Local Plan (KLP), suggests that the Council will always work pro-actively with applicants jointly to find solutions, which means that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area.
- 10.2 Proposals that accord with the policies in the KLP will be approved without delay unless material considerations indicate otherwise.
- 10.3 NPPF policy, in paragraph 21, says that local planning authorities should support existing business sectors and be flexible in their approach.
- 10.4 Policy, in chapter 12 of the NPPF, suggests that local planning authorities should ensure that the issue of design and the way a development will function are fully considered during the assessment of an application.
- 10.5 Consistent with the above, policy LP24 of the KLP suggests that proposals should promote good design by ensuring (among other things) high levels of sustainability through the re-use and adaptation of existing buildings where practicable and promoting walkable neighbourhoods and making walking and cycling more attractive.
- 10.6 In addition to the above, policy LP21 of the KLP requires that all proposals shall ensure safe and efficient flow of traffic within the development and on the surrounding highway network.
- 10.7 Subject to further assessment of the above-mentioned material considerations and policies it is considered that the principle of development has been established, given that the site is unallocated and has a historic commercial use.

### Visual Amenity

- 10.8 There are no physical changes proposed to the site to enable the development to be carried out. The main issue with car sales plots tends to be the fencing and any signage and other advertisements.
- 10.9 With regard to the fencing and gates these are already in place, a check of the history of the site shows that these have been in place since at least 2008.
- 10.10 Any signage or other advertisement is likely to require advertisement consent.
- 10.11 Given the above, the proposals are considered acceptable in terms of visual amenity and in accordance with policy LP24 of the KLP and chapter 12 of the NPPF.

### Residential Amenity

- 10.12 The proposed use of the site as a car sales pitch can lead to disturbance to neighbouring residential properties from several sources. Regarding noise and disturbance, this can be from car engines, valeting and the comings and goings of customers. Disturbance could also be caused by any ancillary uses, such as repair and valeting. These issues, which can cause disturbance, are specific to the use of the site for car sales and, given the proximity to residential properties, have the capacity, if uncontrolled, to represent an adverse impact on residential amenity and the health and wellbeing of the occupiers, contrary to policies LP24, LP51 and LP52 of the KLP and chapters 12 and 15 of the NPPF.
- 10.14 The applicant has submitted a planning statement by D5 Planning, outlining the planning application and referencing two previous applications (2019/91226 and 2019/92001) which were refused on 10 July 2020. One of the reasons for refusal was the failure to provide the following information:
- the likely noise impact of the development.
  - the impact of exhaust fumes on local air quality.
  - the impact of any artificial lighting on neighbouring residential properties.
- 10.15 Since then, the applicant has submitted an Acoustic report by Paul Horsley Acoustics Ltd, dated 06 October 2020 Ref J2978. The aims of the report are to:
- Determine the noise impact of the activities of the car sales and valet operations on the nearby residential premises from the daytime operations and advise on the likelihood of receiving justifiable complaints relating to noise from site.
  - Monitor and assess the noise output of the specific activities at the above site, in accordance with the requirements of BS4142: 2014+A1:2019.
  - Provide an impact assessment of the operations on the nearby residential premises.
  - Advise on the likelihood of justifiable complaints arising from local residents, in terms of the above standard, and provide mitigating noise control recommendations, should they be deemed necessary, to preserve the amenity of the nearby residential premises.

- 10.16 Section 4 of the report states the operations units under consideration are for car sales and valeting of vehicles. The proposal is that car sales are operated on a 'view by appointment' only basis, where customers are required to make an appointment to view and test-drive the cars. No unappointed drop-in or random inspections are to be allowed. The valeting is for the preparation of the show room vehicles only, this will not be available to the public. Therefore, the only noise associated with the two sites by valeting is due to the intermittent use of a car vacuum cleaner and pressure washer.
- 10.17 The existing noise climate is dominated by traffic flow along Warren Street, running past the site, with distant traffic noise also audible throughout. A BS4142 noise survey was conducted on Thursday 10 September 2020 from the site boundary between the site and 103 Warren Street and at close quarters to the specific car valet operations. The survey concludes that the proposal will give rise to a rating value of +1 dB above background levels and, therefore, this is not likely to cause adverse comment or justifiable complaints, and that further mitigation measures may not be necessary, when considered at this location.
- 10.18 Further monitoring was conducted from the boundary with 1 Scarborough Road, which is located opposite the proposed site. It concludes with a rating of 9 dB below the background sound level and is not likely to produce any justifiable adverse comment due to the operations. The findings of the report are accepted and considered true and accurate by Officers and KC Environmental Health.
- 10.19 Furthermore, the previous factory use of the premises must be considered. On a broad level, a proposed car sales use, to be operated in the manner discussed above, with conditions regarding hours of use, would have a lesser impact, on the amenity of the neighbouring dwellings, than a factory. Officers understand the reasons for the objections put forward by neighbours. However, many of the noise matters mentioned arise from the 'habits' of such operators, which are not material considerations, as opposed to issues caused by the actual use.
- 10.20 Given the above, subject to conditions for the hours of use to be between the hours of 0900 to 1800hrs on Monday to Saturday, and 1000 to 1700hrs on Sunday and Bank Holidays and that the viewing and sales of cars in by appointment only, the proposal is considered to accord with policies LP24, LP51 and LP52 of the KLP, regarding residential amenity, including noise, and chapters 12 and 15 of the NPPF.

#### Highway Safety

- 10.21 Applications 2019/91226 and 2019/92001 were refused partly due to the lack of measures to manage parking on Warren Street, as this had been identified as a highway concern.
- 10.22 This application is for the use of premises for car sales and valeting at existing premises with an access onto Warren Street. Warren Street is a 30mph two-way single carriageway local distributor road of approximately 7.5m width, with footways on both sides and street lighting present. To the west of the site there is a residential 20mph zone. The road serves several uses, including residential, car sales, industrial and a school on the opposite side to the application site. There are "No Waiting 8am to 6:30pm" TRO restrictions around

the junction with Wharf Street, to protect visibility and along the south side of Warren Street, between Wharf Street and Mill Street East. There are white “H” bars across entrances on the north side of Warren Street, with white H bars with “Keep Clear” markings to entrances on the south side of the road. This indicates there are parking issues in this location, which have caused concern in the past. Due to the narrow width of the road, parked cars usually stop partially on the footway and this may be causing an obstruction to pedestrians, possibly leading to road safety issues.

- 10.23 Drawing 19/133/A showing on-site parking spaces for sales vehicles, customer parking and staff parking was submitted as part of the application. The parking appears to allow sufficient space for manoeuvring so that staff and visitor vehicles can enter/exit the site in forward gear for road safety reasons. Not all the parking spaces are the recommended 2.4m x 4.8m in size. However, this is not of particular concern, as the staff and visitor spaces are of a suitable dimension and the remainder of the spaces are stock parking spaces, where access is not as important.
- 10.24 There are only limited staff and visitor parking spaces shown on drawing 19/133/A. However, the accompanying acoustic report from Paul Horsley Acoustics Ltd states that all customer visits to the site will be viewing by appointment only and, due to this, the applicants would be able to manage visits to the site, to avoid any additional parking need for customers, beyond what has been provided.
- 10.25 There were several parking issues identified within the area, including parking on the footway that is causing pedestrians to have to walk on the carriageway and this is viewed as a highway safety issue. In the previous applications Officers requested that the applicant should co-fund the process of installing a parking restriction TRO along the north side of Warren Street and this course of action was supported by the Kirklees Road Safety Team. However, this course of action wasn't entered in to by the applicant during the previous application and this was given as one of the reasons for refusal. Since this time, officers have had discussion with KC Enforcement who stated that given the TRO is based upon legislation and procedure outside the remit of planning, it cannot be relied upon in cases where it is fundamental for approval. Furthermore, the conditions relating to the management of the parking on the highway, which are also requested by KC Highways would not meet the enforceability test for conditions as it can't be expected of the applicant to “manage” external parking on a public highway as this is completely out their control.
- 10.26 KC Enforcement's full response to this matter is as follows:  
Both sites are the subject of Enforcement Notices requiring the use applied for to cease. It is understood that these applications for 105 and 105A Warren Street were submitted following enforcement action, with the intention of regularising the development(s). The Compliance Team note the consultation responses and in particular that from Highways DM, essentially stating that the development(s) are acceptable from a highways perspective subject to a condition and that TRO is in place. The Compliance Team have concerns on the lawfulness of such a condition (explained below).



Paragraph 56 of the NPPF makes clear that planning conditions should be kept to a minimum, and only used where they satisfy the following tests:

1. necessary;
2. relevant to planning;
3. relevant to the development to be permitted;
4. enforceable;
5. precise; and
6. reasonable in all other respects.

These are referred to as the 6 tests, and each of them needs to be satisfied for each condition which an authority intends to apply.

Given these are retrospective applications, it is not possible to impose a pre-commencement condition, nor could a condition be worded to require the use to cease if the TRO process (which is outside Planning Legislation) is unsuccessful. Therefore, the Compliance Team do not consider such a condition (requiring a TRO) to meet all of the 6 tests stated above in these circumstances. For the avoidance of doubt, there is no question that a suitably worded condition could meet the 6 tests if the development was a proposal, for instance a “Grampian” style condition preventing the development being commenced unless and until a TRO was approved, but this is not possible with a retrospective application(s).

- 10.27 For the reason set out in paragraphs 10.25 and 10.26, the assessment with regarding to highways needs to be undertaken without the need or reliance on a TRO or conditions to manage parking on the highway. There is evidence that they are using the highway for part of the operation of their business. Whilst highway safety also advised that at the moment there may not appear to be any problems on the highway, this is more than likely due to changes occurring due to Covid and they fully expect issues to return in the post-covid world. This use would ultimately cause a more intensive use of the highway, in an area where there are existing highway issues, to which the proposal would then likely lead to the use not ensuring the safe use of the surrounding highway network for vehicles and pedestrian as well as preventing an efficient flow of vehicles as required by Policy LP21 of the Kirklees Local Plan and Paragraph 110 of the National Planning Policy Framework.
- 10.28 There were also no details of waste collection provided within the application, however it is assumed that this is done as previous and will not have an undue impact on the operation of the local highway network or cause road safety issues.
- 10.29 With the above, officer consider that the application is not acceptable on highways grounds given that it will intensify the use of the highway thus causing the prevent the safe and efficient flow of traffic on the surrounding highway network as required by KLP policy LP21. No conditions, which meet the six tests for conditions can overcome these concerns, whilst the forming of a TRO post decision cannot be relied upon given it could be determined upon grounds outside of planning legislation, could be refused, or could take a form where it does not resolve the highways issues.

### Drainage

- 10.30 The application is for a change of use to an existing building, with all surface water and foul drainage to be retained as existing. It would be unreasonable to require any improvement to the drainage for this application.

### Carbon Budget

- 10.31 On 12th 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 predates 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. To meet the policy and guidance outline above, the provision of one electric vehicle charging point for every ten spaces, to be installed within 3 months, will be sought via condition. There are controls in terms of Building Regulations, which would need to be adhered to as part of the construction process and which would require compliance with national standards. This would ensure the proposal accords with policies LP51 and LP52 of the KLP.

### External Lighting

- 10.32 No information regarding external lighting has been submitted. This permission does not authorise the installation or use of any external artificial lighting. If the development requires external lighting, a new planning application would be required.

### Representations

- 10.33 The application was advertised by neighbour notification letters. Final publicity expired on 30<sup>th</sup> April 2021. 63 representations were received across the applications, all of which were against the proposal. It should be noted that 47 of the representations received were the same letter submitted by different individuals. Other representations were also duplicated across both applications, meaning 6 differently worded representations were received in total. These representations have been summarised as follows:

#### 10.34 *Highway Safety*

- The proposed use intensifies the highway to dangerous levels in a setting nearby to a school, GP practice, a place of worship and in a residential area.
- The additional vehicles cause sight issues for vehicles and pedestrians on Warren Street and Scarborough Street.
- The use exacerbates parking issues on Warren Street.

**Response:** Addressed within points 10.21-10.28 of the report above.

### 10.35 *Residential Amenity*

- Noise and disturbance from the use, including the noise from vehicles and hours of operations, harms the amenity of dwellings nearby.

**Response:** Addressed within points 10.12-10.20 of the report above.

### 10.36 *Non-material matters*

- Legality of vehicles at the site.
- The retrospective nature of the application.
- 'attitudes and habits' of the tenants.
- Inconsiderate parking.

**Response:** These are not material planning considerations and, therefore, cannot be considered.

## 11.0 CONCLUSION

11.1 To conclude, it is considered that the change of use to car sales, from manufacturing is not acceptable in terms of highway safety. The proposed car sales use would intensify the highway and exacerbate existing highways issues on the surrounding highway network contrary to policy LP21 of the KLP.

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. It is considered that the development would not constitute sustainable development given the harm caused to highway safety and is therefore recommended for refusal.

## Background Papers

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2021%2F91052> – 2021/91053 – Application to which this report relates.

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2021%2F91053> – 2021/91053 – Application to which this report relates.

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2019%2F92001> – Previously refused application.

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2019/91226> - Previously refused application

Certificate of Ownership – Notice served on site owner – Certificate B signed