
Report of the Head of Development and Master Planning**STRATEGIC PLANNING COMMITTEE****Date: 11-Jul-2019**

Subject: Planning Application 2019/90661 Variation of conditions 3 (details of phasing) 5 (footway) and 37 (Public Open Space) on previous application 2017/94336 for part demolition of existing mill buildings and erection of 49 dwellings; conversion of listed building to form private gymnasium; re-use of existing mill buildings and alterations to form workshop, car storage, and associated ancillary facilities including café, shop and office space; formation of car parking areas (Listed Building) Washpit Mills, Choppard Lane, Holmfirth, HD9 2RD

APPLICANT

R Cooke, Prospect
Estates Ltd

DATE VALID

01-Mar-2019

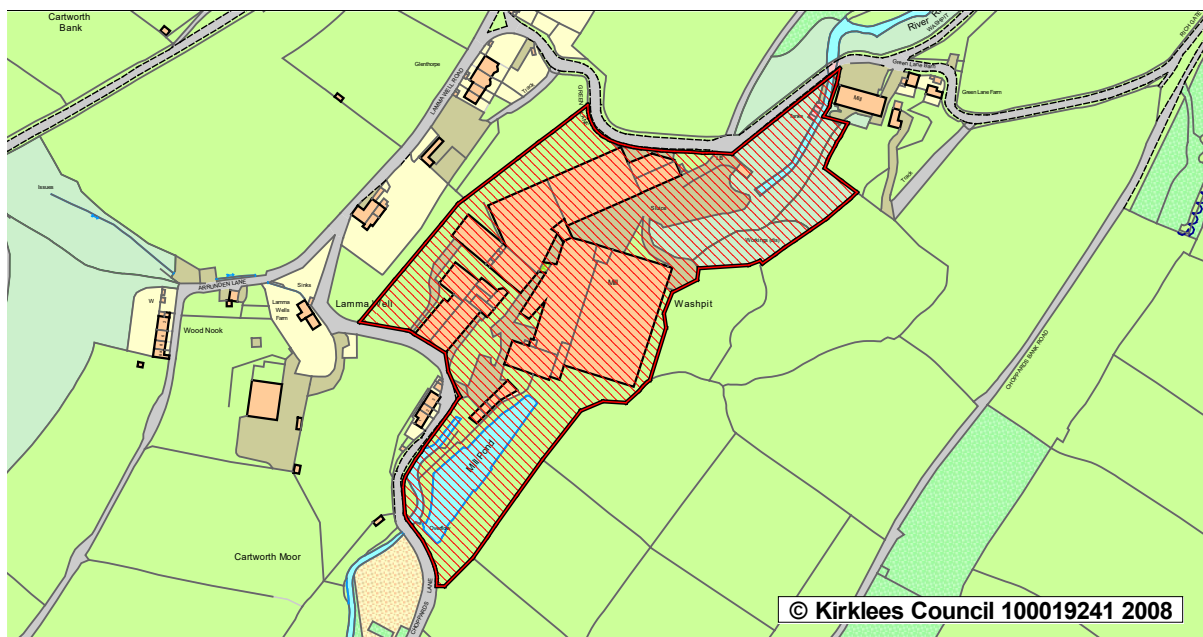
TARGET DATE

31-May-2019

EXTENSION EXPIRY DATE

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

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

LOCATION PLAN

Map not to scale – for identification purposes only

Electoral Wards Affected: **Holme Valley South**

Yes

Ward Members consulted
(referred to in report)

RECOMMENDATION:

DELEGATE authority to the Head of Strategic Development and Master Planning in order to:

1. Approve a variation of conditions 3 and 37 as set out in this report;
2. Refuse the proposed variation of condition 5 (condition 5 to remain as originally imposed)
3. Secure a deed of variation to the original s106 agreement.
4. Complete the list of conditions including those contained within this report and Issue the decision notice.

In the circumstances where the S106/legal agreement has not been completed within 3 months of the date of the Committee's resolution then the Head of Development and Master Planning shall consider whether permission should be refused on the grounds that the proposals are unacceptable in the absence of the benefits that would have been secured; if so, the Head of Development and Master Planning is authorised to determine the application and impose appropriate reasons for refusal under Delegated Powers.

1.0 INTRODUCTION:

- 1.1 The application is brought forward to the Strategic Planning Committee at the request of Ward Councillor Nigel Patrick. Councillor Patrick has stated that:

"If I was a member of that committee which approved the application subject to conditions I might feel let down that the conditions are not to be enforced and a change is to be allowed... You allow all the homes to be built, and then what happens if the conditions are not implemented? How do you enforce it? The last house is built and sold and there is no gym, no POS and no improvement to Washpit New Road. How do you make them do it? Will Kirklees Council pay for the works?"

Maybe it should go back to committee, to explain what has happened."

- 1.2 The Chair of the committee has confirmed that Councillor Patrick's reason for making the request is valid having regard to the Protocol for Planning Committees.

- 1.3 The Strategic Committee was the determining body when the original application was approved and therefore it is appropriate for this variation of condition application to be brought back to the Strategic Committee for determination.

2.0 SITE AND SURROUNDINGS:

- 2.1 The application relates to Washpit Mills which is a former mill complex in Holmfirth. Part of the site has been converted into a classic car restoration and storage business with associated café, shop and offices (The Carding Shed). Some of the remaining mill buildings have been demolished and other buildings, including a grade II listed building, remain in situ and are due to be converted under planning permission 2017/94336.

3.0 PROPOSAL:

- 3.1 It is proposed to vary 3 of the conditions on planning permission 2017/94336. The permission allows for the part demolition of existing mill buildings and the erection of 49 dwellings; conversion of a listed building to form private gymnasium; re-use of existing mill buildings and alterations to form workshop, car storage, and associated ancillary facilities including café, shop and office space; along with the formation of car parking areas.
- 3.2 The conditions in question relate to the provision of a community gym within the listed building (condition 3), the provision of a footway to Washpit New Road (condition 5) and the provision of on-site public open space (condition 37).
- 3.3 The application seeks to vary the timing of the delivery of each of these elements.
- 3.4 Condition 3 states:

3. No development, save for the approved use of Block E, shall commence until details of the phasing of the development have been submitted to and approved in writing by the Local Planning Authority. The phasing of the development shall provide the community gymnasium prior to the occupation of the first dwelling. The development shall be carried out in accordance with the details so approved.

Reason: *In the interests of amenity and highway safety and to accord with Policies BE1 and T10 of the Unitary Development Plan and PLP21 of the emerging Local Plan. The community gymnasium is required to be provided prior to the occupation of the first dwelling so that it is available for use by the residents of the development.*

- 3.5 Condition 5 states:

5. Notwithstanding the submitted details, a detailed scheme for the provision of the proposed new footway to Washpit New Road based on drawing number 3068 (0-) 238 Rev A shall be submitted to and approved in writing by the Local Planning Authority before works to construct any of the dwellings commence. The scheme shall include details of surfacing, kerbing, street lighting, drainage and the relevant Stage 1, 2 or/and 3 Road Safety Audits. The footway shall be provided in accordance with the approved details before any dwelling is first occupied.

Reason: The provision of a footway to Washpit New Road is necessary to make the development acceptable in planning terms. The footway will improve connectivity between the site and Holmfirth and access to public transport links. This will enhance the sustainability of the development. This is to accord with Policies T16, T1(ii) and BE23 of the Kirklees Unitary Development Plan, PLP3 of the emerging Local Plan and guidance in the National Planning Policy Framework.

3.6 Condition 37 states:

37. Notwithstanding the submitted plans, details of the layout of the identified area of public open space within the site shall be submitted to and approved in writing by the Local Planning Authority before any dwelling is first occupied. The details shall include a revised route of a woodland walk that does not connect to a car park and the location and specification of play provision (having regard to the topography of the land) and a specification for the proposed bridge. The public open space so approved shall be provided before any dwelling is first occupied and thereafter retained as such.

Reason: To ensure an acceptable layout for the public open space provision and to accord with Policies H18, BE1 and T10 of the Unitary Development Plan, PLP24 and PLP47 of the emerging Local Plan and guidance in the National Planning Policy Framework.

- 3.7 The conditions require the community gymnasium, footway to Washpit New Road and the POS to be provided before any dwelling is first occupied.
- 3.8 The applicant is proposing to vary the conditions so that the gym, footway and POS are provided upon the occupation of the 20th dwelling.
- 3.9 Supporting information states that the delivery of these aspects before the occupation of the first dwelling is not reasonable having regard to advice in the NPPF.
- 3.10 The supporting information also provides information on how the residential development is to be delivered. It is to be brought forward in separate parcels via different developers, starting with Block M which is for the conversion of a building into 4 dwellings.

4.0 RELEVANT PLANNING HISTORY:

- 4.1 2019/90660 Discharge condition 19 (mill pond) on previous permission 2017/94336 for part demolition of existing mill buildings and erection of 49 dwellings; conversion of listed building to form private gymnasium; re-use of existing mill buildings and alterations to form workshop, car storage, and associated ancillary facilities including café, shop and office space; Formation of car parking areas – Approved
- 4.2 2018/93033 Discharge conditions 3 (phasing of the development), 16 (surface water drainage), 17 (car park drainage) and 33 (vehicle routing) on previous permission 2017/94336 for Part demolition of existing mill buildings and erection of 49 dwellings; conversion of listed building to form private gymnasium; re-use of existing mill buildings and alterations to form workshop, car storage, and associated ancillary facilities including café, shop and office space; Formation of car parking areas – Split decision

- 4.3 2017/94337 Listed Building Consent for conversion of listed building to form private gymnasium and demolition of curtilage buildings – Granted
- 4.4 Appeal decision APP/Z4718/W/18/3208084 – Appeal against condition 22 of planning permission 2017/94336 relating to the hours of use of the approved café and shop – Appeal upheld (the condition was varied to correct an error on the original decision notice).
- 4.5 2017/92061 Certificate of lawfulness for continuation of existing B2/B8 use with ancillary use – Certificate of Lawful Use Granted (relates to part of the application site only)
- 4.6 2016/93428 Part demolition of existing mills and erection of 45 dwellings and 16 apartments. Re-use of existing mill building and alterations to form workshop, car storage, restaurant, function suite and ancillary office space and formation of car park. Conversion of mills to hotel and offices – Appeal against non-determination dismissed
- 4.7 2016/93429 Listed Building Consent for extensions and alterations to form hotel and offices – Appeal against non-determination dismissed
- 4.8 Enforcement Ref COMP/18/0200 – Major site monitoring – Ongoing
- 4.9 Adjacent to the site:
2017/93836 - Prior approval for proposed change of use of offices to 11 apartments – Refused on the grounds of lack of any off-street parking combined with the substandard nature of the surrounding highway network for pedestrians to access public transport – Appeal upheld

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

- 5.1 None

6.0 PLANNING POLICY:

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory Development Plan for Kirklees is the Local Plan (adopted 27th February 2019).
- 6.2 Kirklees Local Plan (2019):
- LP3 – Location of new development
 - LP20 – Sustainable travel
 - LP21 – Highway safety and access
 - LP35 – Historic environment
 - LP63 – New open space
- 6.3 Supplementary Planning Guidance / Documents:
- Draft Highway Design SPD

6.4 National Planning Guidance:

Chapter 4 - Decision-making

Chapter 8 – Promoting healthy and safe communities

Chapter 9 – Promoting sustainable transport

Chapter 16 – Conserving and enhancing the historic environment

7.0 **PUBLIC/LOCAL RESPONSE:**

7.1 Ten representations have been received. A summary of the comments is provided as follows:

Condition 3 (gym):

- The gym was a red herring/compromise in order to achieve the permission. The developer should be held to the condition.
- This is the first step in the process to the developer not providing the gym and coming back with an alternative use for the listed building.
- The gym use came about in order to address highway/traffic issues.
- It could be some years before the proposed 20 dwelling trigger is reached.

Condition 5 (footway):

- A delay to the provision of the footway is unacceptable and will prejudice highway safety.
- There has already been a marked increase in traffic since The Carding Shed business began operating and so the footway is required before residents move in and start creating additional traffic.
- Footway is needed at an early stage given that there would also be construction traffic using Washpit New Road.
- The footway is essential for all people to safely access Dunford Road where the nearest bus stops are located.
- The condition of Washpit New Road is a concern.
- It could be some years before the proposed 20 dwelling trigger is reached.

Condition 37 (POS):

- Failure to provide the POS at an early stage will encourage children to play on a building site which would be unsafe.
- The approved dwellings have small gardens and so the POS is especially important. The nearest playground is over half a mile away and not easy to reach on foot.
- It could be some years before the proposed 20 dwelling trigger is reached.

General comments:

- The applicant has chosen to sell off the site on a piecemeal basis.
- Developer is picking and choosing what they want to do.
- Plans for the footway and POS should be provided to the council to ensure that they are acceptable before development commences.

7.2 **Holme Valley Parish Council** – Object to the application – the conditions should remain.

8.0 CONSULTATION RESPONSES:

8.1 Statutory:

KC Highways Development Management – Object to the proposed variation of condition 5.

8.2 Non-statutory:

KC Landscaping – No objections to the provision of the POS being provided slightly later in the residential build phase, although providing it upon occupation of the 20th dwelling feels to be too late [summary of verbal comments].

9.0 MAIN ISSUES

- Condition 3 – Timing of the provision of the community gymnasium
- Condition 5 – Timing of the provision of a footway to Washpit New Road
- Condition 37 – Timing of the provision of on-site public open space

10.0 APPRAISAL

- 10.1 Section 73 of the Town and Country Planning Act 1990 (as amended) allows for conditions to be removed or varied. In deciding an application under section 73, the local planning authority must only consider the condition/s that are the subject of the application – it is not a complete re-consideration of the application. To assist with clarity, decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged.
- 10.2 The main issues are the timing of the delivery of the community gym, POS and a new footway that is to link the development with Dunford Road. The conditions all require these features to be provided before any dwelling is occupied and the wording of the conditions was agreed with the applicant before the decision was issued. The applicant is seeking to vary the wording of these 3 conditions so that the trigger for their provision is the occupation of the 20th dwelling.
- 10.3 The driver behind this application is that the residential development is to be brought forward in separate parcels via different developers, starting with a small conversion of 4 units. Varying the conditions would give the landowner and different developers a greater degree of flexibility, unencumbered by the financial implications of providing the gym, POS and footway before any profit on the residential scheme has been realised; this in turn should help to facilitate a commencement on the residential element of the scheme. Whilst the non-residential part of the development is up and running, it is the residential part of the scheme that it is likely to generate the majority of the profit.

Condition 3 – Timing of the provision of the community gymnasium

- 10.4 Condition 3 requires details of the phasing of the overall development and specifically states that “the phasing of the development shall provide the community gymnasium prior to the occupation of the first dwelling.”
- 10.5 Details of the demolition phase were submitted and approved under discharge of condition application 2018/93033. The condition has been partly discharged in respect of the demolition phase only with further details for construction phasing to be agreed prior to construction commencing.
- 10.6 The approved development included a community gym within the listed building which would be available for the sole use by future residents and workers of the development. The concept of a community gym came about because it provided a use for the building that lessened the highway impacts of the development, thus directly addressing local concerns and helping to deliver an acceptable scheme for the overall redevelopment of Washpit Mills.
- 10.7 The applicant considers the requirement to provide the gym before any dwelling is occupied to be unreasonable and seeks a later date by which the gym must be provided. It is proposed that the occupation of the 20th dwelling should serve as the trigger for the provision of the gym.
- 10.8 Provision of the gym principally amounts to laying out equipment within the building and there is no indication of the costs that this would involve. It is to be noted that any physical alterations to the building that may be necessary to facilitate the provision of the gym require separate consent as part of listed building consent 2017/94337.
- 10.9 The gym is for the use by staff at The Carding Shed premises as well as future residents. The Carding Shed is already operating and has been for some time and so there is currently some potential unmet demand for the gym. It is however anticipated that much of the demand for the gym would come from future residents and it is therefore arguable whether it is strictly necessary for the gym to be provided prior to the 1st dwelling being occupied. As such the wording of the condition could potentially be seen to be unduly onerous.
- 10.10 Having considered this matter officers are of the opinion that there is scope to be flexible and that it would be reasonable to vary the condition, although the applicant’s suggestion of provision by the 20th dwelling is considered to be overly late in the residential phase. It is considered that prior to occupation of the 10th dwelling would be reasonable (i.e. 20% of the dwellings). At this level of occupation there should be sufficient demand for the gym when taking the existing non-residential use into account and there would still be sufficient incentive for the developer to progress with the residential development, albeit the cost of providing the gym is unknown.

Condition 5 – Timing of the provision of a footway to Washpit New Road

- 10.11 The sustainability and accessibility of the site was a fundamental consideration in the assessment of the original application, as well as under an earlier application for the redevelopment of the site that was dismissed at appeal (2016/93428).
- 10.12 To address the issue of the site's sustainability and accessibility the applicant proposed to provide a walking route along Washpit New Road from the development site to Dunford Road. The route involved a dedicated footway to one side of the road.
- 10.13 It was accepted that the footway would deliver a practical and safe access route between the site and Dunford Road that would enable residents and visitors to the site to access bus links and provide a walking route to Holmfirth. Furthermore, the committee report stated that "Given that the provision of a footway to Washpit New Road is a fundamental aspect of the proposal it is considered that the footway should be provided before any dwelling is first occupied."
- 10.14 The development is already generating vehicular traffic and pedestrian movements as a result of The Carding Shed's operations and the introduction of residential development on the site will immediately add to this. The applicant's proposal to provide the footway when 40% of the houses are occupied is considered to be unacceptable and officers remain of the opinion that the footway is necessary before any of the houses are occupied. It is important that residents can practicably and safely walk between the site and Dunford Road from when they move in and it is also important that the footway is delivered in a timely manner so that staff and customers of The Carding Shed can also begin to benefit from the footway.
- 10.15 The retention of the condition in its current form is considered necessary in order for the development to satisfy Policy LP3 of the Local Plan and guidance in the NPPF.

Condition 37 – Timing of the provision of on-site public open space

- 10.16 On-site POS is provided within an existing wooded area within the north eastern part of the site. Details of the layout of the POS including revised details of a 'woodland walk', natural play opportunities and details of a footbridge crossing the river within this area are required under condition 37.
- 10.17 The POS is principally intended for residents of the development and so it would be reasonable for a proportion of the dwellings to be occupied before the POS is formally laid out. As such officers consider that some flexibility can be afforded here, especially if it will help to deliver an initial phase of the residential scheme. Officers consider that provision of the POS before the occupation of the 10th dwelling is reasonable.

Other conditions:

- 10.18 It is necessary to review the other conditions imposed on the original permission as part of this s73 application.
- 10.19 There have been two separate applications to discharge conditions on the original permission.
- 10.20 Application 2018/93033 relates to conditions 3 (phasing), 16 (temporary surface water drainage), 17 (non-residential car park drainage) and 33 (construction vehicle routing).
- 10.21 Conditions 3, 16 and 33 have been discharged in relation to the demolition phase of the development only. The approved details for the demolition would therefore need to be included as part of any new permission that is issued and the wording of these conditions amended accordingly.
- 10.22 Condition 17 has been partially discharged. Details for the upper car park have been approved but any other non-residential car parking areas will require further details to be agreed. Condition 17 would therefore need to be varied accordingly.
- 10.23 Application 2019/90660 has approved a survey of the mill pond on the site and a management strategy to deal with remedial works to the pond. Condition 19 would therefore need to be amended to reflect the approved details.

Planning obligations:

- 10.24 If the committee resolves to approve the application then a deed of variation to the original s106 agreement will need to be secured. This is in order to tie the new permission to the original s106 agreement.

Representations:

- 10.25 The applicant has indicated that the residential scheme is to be brought forward in separate parcels via different developers and Councillor Patrick has questioned the council's enforcement position if conditions are not complied with.
- 10.26 The provision of the gym, footway, POS and other obligations (education and sustainable travel contributions) are matters for the landowner to agree with the individual developers.
- 10.27 In terms of the council's enforcement position, as the planning permission and s106 agreement rest with the land the council would be able to pursue all landowners in the event that obligations were not delivered in accordance with the specified triggers. What is more, the triggers for the gym, footway and POS are all sufficiently early in the residential build phase to mean that the council would have a robust position in such an event.

- 10.28 Ten public representations have been received in response to the publicity of the application. Officers agree with the comments raised in relation to the timing of the delivery of the footway (condition 5) but for the reasons set out in this report officers consider that there is justification to amend the triggers for the gym and POS. The applicant's suggested trigger for these aspects is however deemed to be too late in the build phase and an earlier trigger is considered to be more appropriate.

11.0 CONCLUSION

- 11.1 The provision of the footway to Washpit New Road is a fundamental aspect of the development and was necessary in order to make the development acceptable in planning terms. The non-residential part of the development is already operational and it is therefore important for the footway to be in situ before any additional vehicular and pedestrian movements are generated by the residential part of the development. On this basis the proposed variation of condition 5 is unacceptable.
- 11.2 A variation of conditions 3 and 37 to allow up to 10 dwellings to be occupied before the gym and POS are provided is considered to be acceptable and would demonstrate flexibility on the council's behalf in order to help to facilitate the residential part of the development coming forward. Officers consider that it would be difficult to substantiate a refusal to vary these two conditions. This is because the gym and POS are both principally intended for the future residents and as such it is reasonable for there to be a certain level of occupation in order to make the gym and POS necessary.

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

- 12.1 The same conditions as imposed on the original permission are to be re-imposed with the exception of conditions 3, 16, 17, 19, 33 and 37 which are to be varied as set out within this report. Condition 22 is to mirror appeal decision APP/Z4718/W/18/3208084.

Background Papers:

Application and history files.

Website link:

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2019%2f90661>

Certificate of Ownership – Certificate A signed.