
Report of the Head of Planning and Development

HEAVY WOOLLEN PLANNING SUB-COMMITTEE

Date: 13-Feb-2020

Subject: Planning Application 2019/93261 Variation of condition 7 (opening hours) on previous application 2002/90188 for change of use from workshops to combined workshop/office and showroom Dual House, Wellington Street, Batley, WF17 5TH

APPLICANT

Mr Ali

DATE VALID

09-Oct-2019

TARGET DATE

04-Dec-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: Batley East

YES

Ward Members consulted
(referred to in report)

RECOMMENDATION: REFUSE

1. **The extension of the hours of operation of the premises from 07:00 to 19:00 from Monday to Sunday would exacerbate the existing ongoing parking issues, particularly on a weekend and evening, further restricting on street parking and access for residents. To permit the extension to the hours of operation, would result in the intensification and demand for parking within the vicinity of the site would not be in the interest of highway safety and efficiency, contrary to the guidance within Policies LP21 and LP24 of the Kirklees Local Plan.**
2. **The extension of the hours of operation of the premises to between 7:00 to 19:00 for 7 days a week would result in a reduction in the quality of life and well-being of neighbouring residential occupants due to noise and activities that would be generated from the premises over significant periods of time. The harmful impact on the residential amenity of neighbouring occupiers would be contrary to the aims of Policies LP24 and LP53 of the Kirklees Local Plan as well as Chapter 12 and 15 of the National Planning Policy Framework.**

1.0 INTRODUCTION:

- 1.1 This application is reported to the Heavy Woollen Planning Sub-Committee at the request of Ward Councillor Habiban Zaman. The reasons for the request by Councillor Zaman are as follows:

"I would like to request the above application to go to planning committee.

Already there are tensions regarding parking, noise and hours of operation which residents are constantly complaining about to the council and councillors. I would like the planning committee to make the decision on this.

I would also request a site visit to determine the effect on surrounding properties, particularly the impact on local residents".

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

- 1.3 In addition, the application also received 7 representations following the period of public consultation and a signed petition containing 25 signatures, which is considered to constitute significant representation.

2.0 SITE AND SURROUNDINGS:

- 2.1 The site consists of a two storey detached building faced in natural stone with tiled mono pitched roof. The principal elevation has three entrances directly from the parking area to the front with shutter box and perforated roller shutter over. To the West of the principal elevation is a delivery hatch at first floor level. The building has a floor area of 180 square metres over two floors with a total of 360 square metres.
- 2.2 To the East, attached perpendicularly, is a two storey building which is currently vacant. The users of this building do not have a right of access to the building from, or use of, the car park.
- 2.3 Directly to the front of the building is a tarmac parking area with access and exit points directly from Wellington Street with five off-street parking spaces. The site is enclosed by a stone wall with iron railing detail.
- 2.4 Directly to the South and West of the site are residential properties. To the North is a sheltered housing scheme and two retail units.
- 2.5 The site has an existing permission for use of the site for a mixed use as a combined workshop/office and showroom.
- 2.6 Wellington Street is a category 'C' adopted highway which is subdivided by a grass verge giving access to the application site and nos.113- 121 Wellington Street via Purlwell Lane.

3.0 PROPOSAL:

- 3.1 The application is sought for the variation of condition 7 (opening hours) on previous application 2002/90188 for the change of use from workshop to combined workshop/office and showroom.
- 3.2 Condition 7 of permission 2002/90188 states the following:

'Notwithstanding the submitted details the premises shall not be open outside the hours of 9.30 to 17.30, Monday to Fridays; 9:30 to 14:00 on Saturdays or at any time Sundays and Bank Holidays unless otherwise agreed in writing by the Local Planning Authority'

- 3.3 The application is sought to amend the condition to state the following:

'Notwithstanding the submitted details the premises shall not be open outside the hours of 7:00 to 19.00, Monday to Sunday unless otherwise agreed in writing by the Local Planning Authority'

4.0 RELEVANT PLANNING HISTORY (including Enforcement action):

4.1 The application site has been subject to the following applications on the site:

2002/90188	Change of use from workshops to combined workshop/office and showroom CONDITIONAL FULL PERMISSION
2003/94602	Change of use of workshop to retail outlet to supply central heating REFUSED
2004/90700	Change of use of workshop to retail/trade to supply central heating and bathroom REFUSED
2016/93910	Change of use of shop to snooker and games room REFUSED
2017/93124	Change of use of shop to snooker and games room REFUSED

Enforcement Action

Breach of Condition Notice served 12.09.2019 with effective date of 09.10.2019 for the Breach of condition 7 of permission 2002/90188.
Appeal not submitted.

5.0 HISTORY OF NEGOTIATIONS:

5.1 The officer contacted the applicant to advice of the consultation response received from KC Highways DM who raised concerns due to the impact of the development on highway safety. The applicant was advised to consider reducing the hours of operation which may be considered acceptable. However, the applicant advised that the business required the proposed hours of use to operate fully and therefore would not wish to make a reduction. Further clarification was sought from the applicant that the proposed 0700 until 1900 was proposed 7 days a week; this was confirmed to be the case via telephone conversation on 28/01/2020.

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).

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 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.

The site is Unallocated within the Kirklees Local Plan.

6.2 Kirklees Local Plan (LP)

LP 1 – Sustainable Development

LP 2 – Place Shaping

LP 21 – Highway Safety and Access

LP 22 – Parking

LP 24 – Design

LP52 – Protection and improvement of environmental quality

6.3 National Planning Policy Framework (NPPF):

Chapter 1 – Building a strong, competitive economy

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

6.4 Supplementary Planning Guidance/documents

Highways Design Guide Supplementary Planning Document

7.0 **PUBLIC/LOCAL RESPONSE:**

7.1 The application has been advertised by means of neighbour notification letter and site notice.

7.2 7 Representations and petition containing 25 signatures were received following the period of public consultation. A summary of the comments received is set out below:

- The applicant has already commenced work in the premises and is carrying out building work without permission being granted.
- Disruption from noise throughout the day and night
- Staff from the workshop use parking spaces for residents meaning residents must park further away.
- There is already a lot of traffic on the street and at times it is difficult to exit or enter the street.
- Cars and vans are blocking driveways and at times park in the middle of the road.
- Children are unable to play outside due to the number of cars.
- Disabled residents living in the area require an ambulance on occasion which is delayed due to inconsiderate parking.
- There is not enough parking at Dual House.
- There is noise at all hours such as hammering, bangle and staple guns and further disturbance when wood is cut in the yard.
- The smell or solvents and chemicals
- The dust from wood work.

- Noise from loading vehicles until late at night.
- The company employs 30 staff
- The use often blocks the road with artic trucks
- Rubbish left outside the yard is attracting vermin.
- There is a compressor in the building for which there are restrictions in a residential area.

8.0 CONSULTATION RESPONSES:

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

8.2 Statutory Consultees:

K.C Environmental Health – Concerns raised in relation to the amenity of neighbouring residential properties from the effects of noise. To alleviate concerns, two conditions are suggested to restrict the hours of activities as well as deliveries and dispatches from the premises. (NOTE: The suggested hours do not correspond with those being requested by the applicant)

K.C Highways Development Management – Extending the opening hours of the premises into the early evening, as well as weekend, would exacerbate the issues that are currently occurring on and around the site. As such, KC Highways DM do not consider the proposal acceptable.

9.0 MAIN ISSUES

- Principle of development
- Visual amenity/local character
- Residential amenity
- Highway issues
- Representations
- Other matters

10.0 APPRAISAL

Principle of development

10.1 Policy LP1 of the Kirklees Local Plan states that the Council will take a positive approach that reflects the presumptions in favour of sustainable development contained within the National Planning Policy Framework to secure development that improves the economic, social and environmental conditions in the area. Proposals that accord with policies in the Kirklees Local Plan will be approved without delay, unless material considerations indicate otherwise.

10.2 The application has no specific allocation within the Kirklees Local Plan. As such, Policy LP24 of the KLP is relevant in that it states that proposals should promote good design in accordance with a specific set of considerations. All the considerations are addressed within the assessment. Subject to these not being prejudiced, this aspect of the proposal would be considered acceptable in principle.

Impact on visual amenity

- 10.3 Policy LP24 of the KLP states that good design should be at the core of all proposals. Proposals should incorporate good design by ensuring that the form, scale, layout and details of all development respects and enhances the character of the townscape and landscape. This is supported by the National Planning Policy Framework (NPPF) which sets out that, amongst other things, decisions should ensure that developments are sympathetic to local character ...while not preventing or discouraging appropriate innovation or change (para.127 of the NPPF).
- 10.4 In this instance, no external alterations are proposed as part of this application therefore there is considered to be no impact on visual amenity, in accordance with Policy LP24 of the KLP and chapter 12 of the NPPF.

Impact on residential amenity

- 10.5 A core planning principle set out in the NPPF is that development should result in a good standard of amenity for all existing and future occupiers of land and buildings. Policy LP24 of the KLP states that proposals should promote good design by ensuring that they provide high standard of amenity for future and neighbouring occupiers, including maintaining appropriate distances between buildings. Policy LP53 of the KLP sets out that it should be ensured that the impact of developments should not reduce the quality of life and well-being of people to an unacceptable level or have unacceptable impacts on the environment; this is consistent with chapter 15 of the NPPF too.
- 10.6 The closest neighbouring dwellings which could be impacted by the development are nos.15, 17 and 19 Hamza Street and no.113 Purlwell Lane.
- 10.7 The listed residential dwellings each share a boundary with the application site with a short separation distance. Although the dwellings are in close proximity to the existing business use, the Council's Environmental Health Officers consider that any impact on the residential amenity of the occupiers could be adequately controlled and minimised by the use of conditions to control the hours of operation and the time for delivery / dispatches as follows:

"No activities shall be carried out on the premises outside the hours of 7:00 and 19:00 Monday to Friday and 9:30 to 14:00 Saturdays. No activities shall take place on Sundays or Bank Holidays".

And

"There shall be no deliveries to or dispatches from the premises outside the hours of 8:00 and 18:00 Monday to Friday and 9:30 and 14:00 Saturdays. No deliveries or dispatches shall take place on Sundays or Bank Holidays".

- 10.8 The suggested conditions would restrict the hours of operation at the site in order to minimise the impact on the amenity of occupants of neighbouring residential units. The recommended hours would be significantly less than those proposed by the applicant, who does not agree to the suggested hours recommended by Environmental Services, particularly on Saturdays and Sundays. Therefore, to extend the hours of operation to between 7:00 to 19:00 for 7 days a week would, in the opinion of officers, result in a reduction in the

quality of life and well-being of neighbouring residential occupants due to noise and activities being generated from the premises over significant periods of time, contrary to the aims of Policies LP24 and LP53 of the KLP as well as chapters 12 and 15 of the NPPF.

- 10.9 For the reason outline above, Officer's consider that the extension of the hours of operation from 07:00 to 19:00 from Monday to Sunday would cause undue impact to the residential amenity of neighbouring occupiers which could not be adequately controlled by condition. The proposal would therefore be considered to be contrary to aims of Policies LP24 and LP53 of the KLP as well as chapters 12 and 15 of the NPPF.

Highway Safety

- 10.10 The application seeks approval for the variation of condition 7 (opening hours) for the previous permission 2002/90188. The current permission restricts operations at the site outside the hours of 9:30 to 17:00 Monday to Friday and 9:30 to 14:00 on Saturdays or at any time on Sundays or Bank Holidays.
- 10.11 As previously reported, the application seeks to vary the hours of operation to 07:00 to 19:00 Monday to Sunday.
- 10.12 The section of Purlwell Lane adjacent to the application site has been subject to petitions for both residents and Local Ward Councillors to the Kirklees Highway Safety team with regards to the ongoing issues of parking on the street which is associated with surrounding businesses which restricts on-street parking and access to residential dwellings.
- 10.13 The applicant has suggested that the vehicles parked along Wellington Street in the vicinity of the businesses are in no way connected to their operations. The Council have suggested that an independent parking survey should be carried out to demonstrate this. However, no evidence to this effect has been submitted to the Local Planning Authority to support the application.
- 10.14 In light of the ongoing concerns by local residents and Ward Councillors of issues caused by unrestricted parking, Highways DM consider that extending the hours of operation of the premises into the early evening and weekends would exacerbate the issues that are currently occurring, particularly on a weekend when residents tend not to be at work. As such, the intensification of parking, as a result of extending the hours of operation, would not be in the interest of highway safety and efficiency, contrary to the guidance within Policies LP21 and LP24 of the Kirklees Local Plan.

Enforcement

- 10.15 The Planning compliance team received a public complaint alleging operations outside of the permitted hours of operation at the application site. Through investigations, the site owner confirmed to working outside of the restricted hours to the Planning Compliance Team.
- 10.16 Following the confirmation of the breach of condition 7 of permission 2002/90188, the Planning Compliance Team served a Breach of Condition Notice (BCN) on 12.09.2019 which took effect on 09.10.2019.

- 10.17 If further evidence is found to show that the site continues to operate outside of the permitted hours of operation, the site owner would be invited for an interview under caution. It is noted that there has been limited evidence submitted following the service of the BCN showing that the site continues to operate outside of the permitted hours of operation.
- 10.18 A decision would then be required to be made as to the public benefit of taking formal action in line with the Development Management Compliance Strategy. Further action would be taken if it was considered that the breach of condition caused an environmental harm (for example, noise disturbance). If there is found to be no environmental harm (for example, cleaning or office work which causes no harm with regards to noise and disturbance) then a decision would be made as to the public benefit of taking formal action.

Other matters

Climate change and Air quality

- 10.19 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 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.
- 10.20 The proposal is for the extension of hours of operation to an existing business use therefore it would be unreasonable for the Local Planning Authority to add further conditions requiring improvements to the environmental quality of the site.

Representations

- 10.21 Representations and petition containing 25 signatures were received following the period of public consultation. In so far as the point have not been addressed above, officers respond as follows:
- The applicant has already commenced work in the premises and is carrying out building work without permission being granted.
Response: The building has a permitted use for general industry and therefore work is permitted inside the specified hours of operation.
 - Disruption from noise throughout the day and night
Response: This is noted. An active enforcement case is open to monitor disturbance from the site.
 - Staff from the workshop use parking spaces for residents meaning residents must park further away.
Response: A full assessment of the impact on highway safety is contained within the above report.

- There is already a lot of traffic on the street and at times it is difficult to exit or enter the street.
Response: A full assessment of the impact on highway safety is contained within the above report.
- Cars and vans are blocking driveways and at times park in the middle of the road.
Response: A full assessment of the impact on highway safety is contained within the above report.
- Children are unable to play outside due to the number of cars.
Response: A full assessment of the impact on highway safety is contained within the above report.
- Disabled residents living in the area require an ambulance on occasion which is delayed due to inconsiderate parking.
Response: A full assessment of the impact on highway safety is contained within the above report.
- There is not enough parking at Dual House.
Response: A full assessment of the impact on highway safety is contained within the above report.
- There is noise at all hours such as hammering, bangle and staple guns and further disturbance when wood is cut in the yard.
Response: The building has a permitted use for general industry and therefore work is permitted inside the specified hours of operation. If outside the hours then residents should contact planning enforcement.
- The smell or solvents and chemicals
Response: The building has a permitted use for general industry and therefore work is permitted inside the specified hours of operation. If the smell is a concern it would be advised to contact Environmental Health.
- The dust from wood work.
Response: The building has a permitted use for general industry and therefore work is permitted inside the specified hours of operation. If the dust is a concern it would be advised to contact Environmental Health.
- Noise from loading vehicles until late at night.
Response: A full assessment of the impact on highway safety is contained within the above report.
- The company employs 30 staff
Response: There are no details attached to the application to specify the level of staff at the site.
- The use often blocks the road with artic trucks
Response: A full assessment of the impact on highway safety is contained within the above report.
- Rubbish left outside the yard is attracting vermin.
Response: It would be advised to contact Environmental Health if this is a continuing issue.
- There is a compressor in the building for which there are restrictions in a residential area.
Response: It would be advised to contact Environmental Health if this is a continuing issue.

11.0 CONCLUSION

- 11.1 Taking all material considerations into account, for the reasons outlined above, the variation of condition 7 of permission 2002/90188 to extend the hours of operation from 07:00 to 19:00 Monday to Sunday would be considered to exacerbate the existing concerns for highway safety on this section of Purlwell Lane which would be detrimental to highway safety and contrary to Policies LP21 and LP24 of the Kirklees Local Plan. In addition, due to the long hours of operation proposed, there are also significant concerns raised regarding the impact on the residential amenity of surrounding residential occupants, contrary to Policies LP24 and LP53 of the Kirklees Local Plan as well as Chapters 12 and 15 of the National Planning Policy Framework.
- 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.
- 11.4 It is considered that the development proposals do not accord with the development plan and the adverse impacts of granting permission would significantly and demonstrably outweigh any benefits of the development when assessed against policies in the NPPF and other material considerations. The application is therefore recommended for refusal.

Link to the application details:-

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2019%2f93261>

Certificate A signed and dated 30.09.2019