

WEST DUNBARTONSHIRE COUNCIL

Report by Planning, Building Standards and Environmental Health Manager

Planning Committee: 3rd August 2022

DC22/096/FUL: **Change of use to allow fitting of tyres to motor vehicles together with associated works (retrospective) by Mr K Connelly, KMC Tyres & Recovery.**

1. REASON FOR REPORT

- 1.1** A previous planning application for the site, which was subsequently the subject of an appeal, was considered by the Committee and the application thus raises issues of local significance. Under the terms of the approved Scheme of Delegation, it therefore requires to be determined by the Planning Committee.

2. RECOMMENDATION

- 2.1** Refuse planning permission for the reasons set out in Section 9.

3. DEVELOPMENT DETAILS

- 3.1** The application site relates to an area of land on the corner of Dumbarton Road and Beeches Road, Duntocher, Clydebank. The site is bounded by Beeches Road to the east with flatted properties beyond and by Dumbarton Road to the south with a large area of open space on the opposite side of the road. To the west, the site is bounded by a public house and car park, and to the north there is an area of open space which separates the site from the library and community centre. The site measures approximately 640 square metres and was previously used as a car park associated with the adjacent public house.
- 3.2** In June 2021, the Planning Committee refused planning permission (DC21/012/FUL) for the siting of 3 containers on the existing car park to accommodate tyre fitting business as the Committee considered that the proposed development would result in the introduction of a type of use that would be out of character with the surrounding area and would have a significant detrimental impact on the amenity and appearance of the surrounding area. Additionally, it was considered that the proposal would not be compatible with adjacent residential uses. The Committee was therefore of the view that the proposal was unacceptable and contrary to Policy H5 of the adopted West Dunbartonshire Local Plan, Policy BC4 of the West Dunbartonshire Local Development Plan 1 (Proposed Plan 2016) and Policy H4 of the West Dunbartonshire Local Development Plan 2 (Proposed Plan 2020).
- 3.3** Following refusal, the applicant submitted an appeal. In considering the appeal, the Reporter assessed both the impact on the character and appearance of the immediate locality together with the amenity of nearby residents. The Reporter found the containers to be utilitarian structures which appear out of place in this area and considered that that they were visually harmful. The Reporter also found that the site was not located within a fundamentally commercial area and the activity would be out of place. The Reporter went on to find that the containers were positioned a relatively

short distance from adjacent residential properties and visible to residents of upper flats and this would adversely impact upon their amenity. Overall, the Reporter considered that the proposed development did not accord with the relevant provisions of the development plan and was not supported by Policy H5 of the adopted Local Plan, Policy BC4 of proposed Local Development Plan 1 and Policy H4 of proposed Local Development Plan 2. The Reporter found that there were no material considerations which would justify granting planning permission.

- 3.4** The current application is for the same use of the site as previously refused planning permission and seeks to address the previous reasons for refusal with the containers re-positioned on the site and largely enclosed behind a 2.4 metre high timber screen. It remains that the site is enclosed by a green weld-mesh fence. Despite the previous refusal of planning permission, the site remains in use for the purposes of tyre fitting and the timber screens have already been erected around the containers. Accordingly, the application is considered in retrospect.

4. CONSULTATIONS

- 4.1** West Dunbartonshire Council Roads Service have no objections to the proposed development
- 4.2** West Dunbartonshire Council Environmental Health Service have indicated that a Noise Impact Assessment (NIA) Report for this site was received under for the previous, planning application reference number DC21/012/FUL, however there are concerns regarding level of noise from the tyre fitting operations since going into operations. It is noted that there is a generator in use for the operation. If planning consent is to be grant the applicant must ensure that only the plant and equipment assessed/mentioned in the previously submitted NIA can be used, otherwise the applicant must submitted another Noise Impact Assessment to include the new set of plant and equipment.

5. REPRESENTATIONS

- 5.1** Three objections have been received from nearby residents. The concerns raised can be summarised as follows:
- The development and use of the site has already been refused on appeal.
 - There is little difference between the current proposal and the previous one.
 - The location is not appropriate for this use.
 - Noise levels from the operation adversely affect local residents.
 - Significant noise results from the generator on site with residents unable to open windows.
 - The proposal will result in an increase in traffic at an existing busy junction causing disruption to public transport and to cars entering the adjacent housing scheme.
 - Increased risk of accidents for both vehicles and pedestrians.
 - Vehicles may park on the road and this may adversely impact upon road and pedestrian safety.
 - Adjacent property values may be adversely impacted upon.
 - The proposal is contrary to the principles of good placemaking.
 - The use of the site continues to operate without planning permission.
 - The Enforcement Notice issued has not been complied with.

The concerns raised shall be assessed in the Section 7 below.

6. ASSESSMENT AGAINST THE DEVELOPMENT PLAN

West Dunbartonshire Local Plan 2010

- 6.1** Policy GD1 seeks to ensure that all new development is of a high quality design, of an appropriate and compatible land use and that it respects the character and amenity of the surrounding area. Policy H5 seeks to ensure that the character and amenity of existing residential areas are safeguarded where new development is proposed. Where non-residential uses are proposed consideration should be given as to whether the use can be considered ancillary or complementary to the residential area. Developments should not result in a significant loss of amenity to surrounding properties, such as through increased traffic, noise, vibration, smell artificial light, litter, hours of operation and general disturbance.
- 6.2** The proposal cannot be considered to be of a high quality design, of an appropriate and compatible land use and one which respects the character and amenity of the surrounding area. It is not supported by Policy GD1. The proposal also would also fail to safeguard the character of the existing residential area and is not supported by Policy H5. Accordingly, the proposal cannot be considered to comply with the Adopted Local Plan and is assessed fully in Section 7 below.

7. ASSESSMENT AGAINST MATERIAL CONSIDERATIONS

West Dunbartonshire Local Development Plan (LDP2) Proposed Plan

- 7.1** Since the previous refusal of planning permission, LDP1 had ceased to be a material consideration in the assessment of planning applications. The modified LDP2 was approved by the Council in August 2020 and the Council then advised the Scottish Ministers of its intention to adopt the Plan. The Scottish Government issued a direction to the Council on 18th December 2020 requiring modifications to the housing parts of LDP2. None of the policies considered in the determination of these applications is affected by the Direction. LDP2 is therefore the Council's most up to date policy position and has significant weight in the assessment and determination of planning applications at this time.
- 7.2** Policy H4 of LDP2 focuses on the safeguarding of amenity in existing residential areas and sets a requirement for developments to protect, preserve and enhance their residential character and amenity. There is a general presumption against the establishment of non-residential uses which potentially have detrimental effects on local amenity or which cause unacceptable disturbance to local residents. Similarly to Policy H4, Policy CP1 seeks to ensure that all development takes a design lead approach and demonstrate the six qualities of successful places. Policy ENV8 seeks to ensure that developments do not have a significant impact on established residential areas and properties by way of air, noise or light pollution. Where required, proposals that have the potential to impact, will require to demonstrate that their impact is not significant and provide adequate mitigation where necessary.
- 7.3** The proposal cannot be considered to take a design lead approach which responds to the local context and be compatible with local amenity. It also fails to safeguard the amenity of the residential area. Accordingly, the proposal cannot be considered to comply with proposed LDP2.

Principle of Development

- 7.4** The site is located within a residential area as defined by the adopted Local Plan and proposed Local Development Plan 2. Overall, the area is residential in character with residential properties immediately opposite the site. Notwithstanding this, a variety of other uses are also found within the vicinity of the site providing local facilities within the area. These include a retail shop, hairdressers, and dog groomers together with a public house immediately adjacent to the site to which the car park forming the application site was previously associated. Areas of open space also lie in close proximity to the site. In paragraph 8 of the appeal decision for the previous application, the Reporter is clear that in accepting that whilst this is a convenient location for motorists to stop, the site is positioned within a location that is not fundamentally a commercial area and the Reporter considered that the activity would be out of place. It is therefore clear that the principle of the development is not supported by the appeal decision.
- 7.5** Notwithstanding the Reporter's concerns regarding the principle of the activity being undertaken on site, there were also significant concerns in respect of the appearance of the site. The Reporter was concerned that the use of shipping containers was inappropriate at this location, noting in paragraph 8 of the appeal decision that they were utilitarian structures which appear out of place in this area and that they are unattractive. Overall the Reporter found them to be visually harmful. Shipping containers are also more readily associated with industrial areas, a point that the Reporter considered to be important.
- 7.6** In seeking to address the concerns raised in the previous appeal decision, the containers and storage areas within the site are now largely enclosed behind a timber screen. The forward part of the container which is not enclosed behind a screen is covered by a camouflage netting. Whilst acknowledging the applicant's efforts to screen the containers and storage area within the site, it is considered that this does not address the fundamental concerns regarding the development. The site still has an industrial appearance which is not considered to respond to the locality and the use and activity of the site remains incompatible with the residential character of the wider area. The revised proposal cannot be held to adequately address the previous reasons for refusal both in terms of the visual appearance of the site and that overall, the activity was considered to be out of place.

Impact on Residential Amenity

- 7.7** Residential properties lie to the opposite side of Beeches Road. Noise disturbance is raised as a concern in the objections received. In considering the appeal, the Reporter noted that a tyre changing machine and a wheel balancing machine would be accommodated within one of the two larger containers and that with a diesel generator and compressor within the third, smaller container. The Reporter also noted the noise impact assessment which the applicant had commissioned. Whilst noise impact Monday to Saturday would not be adverse, it would be more significant on Sundays. The Reporter considered that this could, however, be overcome by re-positioning the containers from what is shown in the application plan and this could be addressed by condition if required. Overall, the Reporter did not believe there can be a substantial case against the development in terms of noise.
- 7.8** The consultation response for this application from the Council's Environmental Health Service references the Noise Impact Assessment (NIA) Report received under for the previous planning application, which the applicant has also submitted in support of this application. The repositioning of the containers since the previous application is, however, noted. Whilst the concerns raised by Environmental Health are noted, in light of the position taken by the Reporter in the previous appeal decision, it is not

considered that the refusal of planning permission on noise disturbance alone could be justified. Ensuring equipment that was not assessed as part of the NIA undertaken is not used on site could be addressed by condition if required.

In further assessing the impact on local residents, the Reporter sets out in paragraph 12 of the appeal decision that the containers are utilitarian in appearance and are designed to be useful and practical, rather than attractive. The Reporter went on to consider the proximity of neighbouring residential windows and that the containers would be very obvious features, at relatively short distances, as residents of upper flats look out from their windows. Notwithstanding the applicant's efforts to address these concerns with the additional screening on site, it remains that the site still has an industrial appearance and the adverse impact on neighbouring residents is not diminished.

Parking and Access

- 7.9** Concerns have been raised regarding the proposed development's potential to cause an increase in traffic at an existing busy junction, causing disruption to public transport and other road users. Further concerns in respect of on street parking and increased risk of accidents for both vehicles and pedestrians are highlighted. In considering roads matters including road safety, the assessment is guided by the consultation response from the Council's Road Service who, having fully considered the proposal, offer no objections. The previous appeal decision also raised no road matters of concern. There are thus no issues in respect of road safety which arise that would justify refusal.

Other Matters

- 7.10** As assessed in determining the previous planning application, the site is located near to the Antonine Wall, the setting of which is protected as it is a Scheduled Ancient Monument. The Wall at this location is not visible as it passes under existing buildings. The proposal would not involve any ground excavation works there is no risk to archaeological remains.

Representations Received

- 7.11** Turning to the outstanding points raised in the submitted objections which have not been assessed above, it is acknowledged that the application is considered in retrospect and that the site operates despite the previous refusal of planning permission on appeal. Whilst this situation is disappointing, it would be inappropriate to refuse planning permission solely on this basis. An Enforcement Notice and Stop Notice were issued in April of this year. These were issued to KMC Tyres and Recovery Ltd as the occupier of the site. However, following the issue of the Notices, it has been established that this company has been dissolved. Accordingly, the Notices have been withdrawn whilst the situation is reviewed and the matter will be revisited following the determination of this application. It is noted that whilst no longer a Limited Company, it is advised that the applicant still trades under the name KMC Tyres and Recovery. Whilst concerns regarding the loss of property values is noted, this is not a material planning consideration.

8. CONCLUSION

- 8.1** It remains that the revised proposal introduces a commercial use with industrial characteristics into a primarily residential area. Whilst acknowledging the applicant's efforts to screen the containers and storage area within the site, this does not address the fundamental concerns regarding the development. The site still has an industrial appearance which is not considered to respond to the locality, and the use and activity of the site remains incompatible with the wider area. The revised proposal cannot be held to adequately address the previous reason for refusal both in terms of the visual

appearance of the site and that overall, the activity is out of place. The adverse impact on neighbouring residents is also not diminished. It remains that the proposal is not supported by Policies GD1 and H5 of the adopted West Dunbartonshire Local Plan and Policies CP1 and H4 of the proposed West Dunbartonshire Local Development Plan 2.

9. Reasons for Refusal

1. The proposed development would result in the introduction of a use that would be out of character with the surrounding area, would have a significant detrimental impact on the amenity and appearance of the surrounding area and would fail to protect, preserve and enhance the residential character and amenity of the area. This is contrary to the requirements of Policy H5 of the adopted Local Plan and Policy H4 of the proposed West Dunbartonshire Local Development Plan 2.
2. The development is not of a high quality design and does not respect the character and amenity of the area in which it is located. With reference to the local area, it is also inappropriate in terms of the land use and design and is thus not supported by Policy GD1 of the adopted Local Plan.
3. The development does not take a design led approach which responds to the locality and cannot be held to reflect the six qualities of successful places, contrary to the requirements of Policy CP1 of the West Dunbartonshire Local Development Plan 2.

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Date: 3rd August 2022

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Appendix: Location Plan

Background Papers:

1. Application documents and plans
2. West Dunbartonshire Local Plan 2010
3. West Dunbartonshire LDP - Proposed Plan 1
4. West Dunbartonshire LDP - Proposed Plan 2
5. Consultation responses
6. Representations
7. Planning Appeal Decision PPA-160-2035

Wards affected: Ward 4 (Kilpatrick)