

Ian Mosey Action Group ("IMAG")

Parish Council Meeting 22 November 2023

Update

The IMAG attempted to present the Traffic Regulation Order proposal to a member of the Local Highways Authority ("LHA"). This was rejected and made clear that a TRO on Park Street would not be considered. This could be seen as "predetermination" i.e. making up one's mind before having seen any case or evidence.

The Local Planning Authority ("LPA") has issued an Enforcement Notice for breaches of Condition 1 (vehicular movements) outside of the hours stipulated in CLEUD 1 and CLEUD 2. IMAG has not had sight of this Notice. However, residents will be given an opportunity to object. It is important that residents do object even if they feel it is pointless. It will need to be explained to residents why this is important.

With regard to the Cooler, the LPA has confirmed that they consider its installation a breach of Condition 2 of 11/00498/73A.

- **Pushback on the proposed Traffic Regulation Order**
 - A TRO was not allowed to be brought up at the Thirsk and Malton Area Constituency Committee Meeting ("ACC") on the 29 September 2023.
 - "The Agenda had already been circulated" – it was not allowed to appear at "Business 11. Other business which the Chairman agrees should be considered as a matter of urgency because of special circumstances".
 - It is not allowed to appear on the Agenda for the next ACC scheduled for 1 December.
 - Insufficient resources to enforce a TRO
 - Rebutted using the Road Policing Unit's excuse in Trail Riders Fellowship v Hampshire County Council 2019 – A LHA is under no legal or statutory obligation to consider enforcement resources when determining a TRO. The LHA has acknowledged this to be the case.
 - Cannot put TROs on "B" roads
 - Rebutted at the last ACC- Park Street is a "C" road and one was placed on the Norton level crossing which was far more onerous, being a 24/7 7.5 tonne weight restriction.
 - Displacement from the C89 (Park St) and B1363 (Oswaldkirk Bank) onto other less suitable rural roads
 - Steve Mason requested a paper be written so that he could discuss displacement with the LHA at a "Transport Meeting". This was done. As yet Steve has not been able to discuss this paper as the Transport Meeting has been cancelled every Friday for at least the last two weeks.
 - LHA has not offered a meeting with us nor volunteered to come and view the roads that may be affected by displacement.
 - Next Steps re TRO – Displacement to be a subject for local residents to bring up at the next ACC at "Public Questions or Statements".

- The Next ACC is at Ryedale House, Malton on 1 December 2023 at 2.00pm – it is very important that as many people as possible attend this meeting and ask as many questions as possible. If local residents do not feel confident to read out their own questions a member of the ACC can do so on their behalf. Also, if local residents cannot attend, say because of work commitments, their questions can be read out too by a member of the ACC. Local residents without a car can be accommodated as many car drivers can provide lifts.

- **Enforcement Notice issued by the LPA relating to vehicular movements in breach of Condition 1 of Planning Approval 11/00498/73A**
 - Background reading - Royal Town Planning Institute – Planning Enforcement Handbook for England (18 May 2020)
 - Background – The LPA issued two Certificates of Lawfulness (“CLEUD”). Despite this Ian Mosey Ltd allegedly continued to breach the conditions attached to both CLEUD 1 and CLEUD 2.
 - An Enforcement Notice was issued on 26 September and Ian Mosey Ltd has appealed on the grounds of:
 - (a) *“Planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged”* – in effect, this is similar but not the same as a retrospective planning application.
 - (d) *“That at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by [the matters stated in the notice]”* – this means it was too late to issue an Enforcement Notice under s171B of the Town and Country Planning Act 1990.
 - (f) *“That the steps required by the notice to be taken, or the activities required by the notice is to remedy a breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by such breach”* – This means taking steps to remedy a breach. Ground (f) arguments must be clear on what steps are being proposed to remedy the breach.
 - Next steps – There are three appeal procedures available:
 1. Written representations
 2. Hearing
 3. Public Inquiry

Only 1) and 3) are routinely used in enforcement appeals. The Planning Inspectorate determines the appeal procedure after inviting the views of the parties.

The Enforcement Officer has confirmed that the Planning Inspector has not yet determined which procedure to be taken. The officer has also confirmed that local residents will be able to object directly to the Planning Inspector.

- **Potential Breach of Condition 2 of 11/00498/73A**

- The output of the Mill has increased from 2,500 tonnes per month to in excess of 25,800 per month (source: Environment Permit), **a 932% increase.**
- Background to Condition 2 – *“No machinery or other equipment shall be introduced or installed which would have the effect of increasing the current operating capacity of the mill without the prior written approval of the Local Planning Authority. Reason: To ensure that the amenities of nearby residents are not unreasonably affected, and in order to comply with Policy ENV1 of the Ryedale Local Plan.”*
- From the Ian Mosey Website 27 November 2019: Becky Milne, Director of Ian Mosey (Feed) Ltd said: *“This new equipment will not only help us to improve product quality but also help make our Mill more productive”.*
- The LPA has stated: *“it would appear that a breach of condition 2 of 11/00498/73A has occurred and the LPA is in the process of sending correspondence to the relevant parties regarding this matter and we have also been reviewing the matter with our legal representatives. As it stands this matter remains under investigation and I will look to come back to you once I am in a position to do so.”*
- Next steps- monitor and report back once the Enforcement Officer makes a recommendation.

Note that 11/00498/73A, determined in 2011 was a retrospective application to vary Condition 1 of another retrospective application i.e. 03/00350/73 determined in 2003. If Ian Mosey Ltd seeks retrospective planning approval for the Cooler, this will be “retrospective planning to the power of 3”!

A LPA can decline to determine a retrospective planning application if an enforcement notice has previously been issued (s70C of the Town and Country Planning Act 1990 as amended by s123 of the Localism Act 2011).

Section 124 of the Localism Act 2011 enables Enforcement to be taken against a breach of planning control when the time limits for taking action have expired and the breach has been concealed.

A person who has undertaken unauthorised development has only one opportunity to obtain planning permission after the event. This can either be by means of a retrospective planning application (under s73A of the Town and Country Planning Act 1990) or by means of appeal against an enforcement notice on ground that planning permission ought to be granted or the condition of limitation concerned ought to be discharged – this is referred to as a ground (a) appeal. Planning Approval 11/00498/73A was retrospective.

Since 31 August 2015, intentional unauthorised development is a material consideration to be weighed in the determination of planning applications and appeals.