KIRKLEES METROPOLITAN COUNCIL
INVESTMENT & REGENERATION SERVICE

DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended) – SECTION 70

DELEGATED DECISION TO DETERMINE PLANNING APPLICATIONS

Reference No:	2017/62/93914/W
Site Address:	Imman Halal Meat, 37, Blacker Road, Birkby, Huddersfield, HD1 5HU
Description:	Change of use of part of butchers shop to hot food take away, installation of extraction flue (within a Conservation Area)
Recommending Officer:	William Simcock

DECISION – Full Conditional Permission

I hereby authorise the approval of this application for the reasons set out in the officer's report and recommendation annexed below in respect of the above matter.

Neil Bearcroft

AUTHORISED OFFICER

Date: 10-Jan-2018

Officer Report

Site Description

37 Blacker Road is a two storey building forming part of a terraced row. Both the front and rear elevations face the public highway (Blacker Road and Filbert Street respectively). It is in use as a butchers shop. It has a mainly stone exterior. A single-storey extension has been built at the rear. There is a small raised forecourt at the front. The other properties in the row are mainly in commercial use (retail or hot food takeaway) at ground floor.

Description of Proposal

The proposal is for change of use of part of the shop to a hot food takeaway, the installation of a rear door and an extractor flue.

The change would apply to 150 sqm and it would have 2 full-time and 2 part-time employees. Hours of use have not been stated.

The extractor flue would reach 600mm above the eaves. Apart from this no external alterations are proposed.

The agent has confirmed that all despatches from the premises would be via the existing front door, though the shop, and not the rear door which would be used only for servicing and emergency purposes.

History of negotiations/amendments received

None.

Relevant Planning History

2016/91195 – Erection of lower ground and ground floor extension and demolition of existing external chiller unit. Approved and implemented.

Representations

Final publicity date Expires: 28-Dec-2017

- No representations made.

Consultation Responses

The following is a brief summary of Consultee advice (more details are contained in the Assessment section of the report, where appropriate):

- Environmental Health – No objections subject to condition.
- Conservation and Design – No objections.
- Police Architectural Liaison Officer – No objections.

Policy

The statutory development plan comprises the Kirklees Unitary Development Plan (saved Policies 2007).

The statutory development plan is the starting point in the consideration of planning applications for the development or use of land unless material considerations indicate otherwise (Section 38(6) Planning and Compulsory Purchase Act 2004).

The Council is currently in the process of reviewing its development plan through the production of a Local Plan. The Council's Local Plan was submitted to the Secretary of State for Communities and Local Government on 25th April 2017, so that it can be examined by an independent inspector. The Examination in Public began in October 2017. The weight to be given to the Local Plan will be determined in accordance with the guidance in paragraph 216 of the National Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy Framework (2012), these may be given increased weight. At this stage of the Plan making process the Publication Draft Local Plan is considered to carry significant weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

The site within the Birkby Conservation Area and Birkby Local Centre on the UDP Proposals Map and on Kirklees Publication Draft Local Plan.

Kirklees Unitary Development Plan:

- **S14** – Hot food takeaways
- **EP4** – Noise-sensitive and noise-noise-generating development
- **T10** – Highway safety
- **BE1** – Design principles
- **BE2** – Quality of design
- **BE5** – Development within Conservation Areas.

Kirklees Publication Draft Local Plan (PDLP):

- **PLP 13:** Town centre uses
- **PLP 16:** Food and drink uses and the evening economy
- **PLP 21:** Highway safety and access
- **PLP 24:** Design
- **PLP 35:** Historic environment

- **PLP 52:** Protection and improvement of environmental quality

National Policies and Guidance:
National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 27th March 2012, together with Circulars, Parliamentary Statements and associated technical guidance.

The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications.

- Core Planning Principles
- Section 1 – Building a strong, competitive economy
- Section 2 – Ensuring the vitality of town centres
- Section 8 – Promoting Healthy Communities
- Section 11 – Conserving and enhancing the natural environment
- Section 12 – Conserving and enhancing the historic environment.

Assessment
The following matters are considered in the assessment below –

1) Principle of development
1) Impact on visual amenity (including any heritage considerations)
2) Impact on residential amenity
3) Impact on highway safety
4) Other matters
5) Representations

1 – Principle of development: The site is within a local centre and Birkby Conservation Area.

Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that Local Planning Authorities shall pay special attention to the desirability of preserving or enhancing the appearance of buildings or land within a Conservation Area.

Policy BE5 applies, which states that development within Conservation Areas should ensure that the character and appearance of the Conservation Area is conserved or enhanced. Also NPPF part 12 applies, which states that development should ensure that the significance of heritage assets is conserved and that harm should not be allowed without a proportionate justification.

The main UDP Policy specific to hot food takeaways is S14. This states that proposals for hot food takeaways will be considered having regard to provision for car parking for customers and staff, the effect on highway safety, the effect on residential amenity, the visual impact of any alterations proposed.

Besides this, the main relevant UDP Policies are: BE1 and BE2 (development should be visually attractive and contribute to a sense of local identity), T10 (development should not adversely affect highway safety), and EP4 (impact of noise-generating on noise-sensitive development) to be considered at the planning stage.

Within the NPPF, it will be assessed having regard to the advice to drive sustainable economic development and to support existing business sectors in “Core planning principles” and “Building a strong competitive economy” and the promotion of the vitality and viability of town centres as set out in “Ensuring the vitality of town centres”. Also of relevance is the advice in “Promoting healthy communities” that planning decisions should ensure that crime and disorder, or the fear of crime, do not undermine quality of life or community cohesion.

Turning to the Publication Draft Local Plan, Policy PLP 13 states, in brief, that main town centre uses shall be located within defined centres, which should provide a mix of uses whilst retaining a strong retail core. This Policy has attracted several significant unresolved objections so it can be given only limited weight. Policy PLP 16 of the draft Local Plan states that proposals of this nature should be supported, subject to ensuring that the concentration of food and drink and licensed entertainment uses should not be in any one part of a centre, where this would result in harm to the character, function, vitality and viability of the centre. This policy does not conflict with any adopted UDP Policy or with the NPPF. But it has attracted several unresolved objections and can be afforded only limited weight. The other PDLP Policies listed above can in principle be given considerable weight but largely cover the same considerations as the NPPF and UDP policies.

2 – Impact on vitality and viability of the local centre: The proposed use would support and enhance the viability of an existing business in a Local Centre and it is therefore considered in principle to support the aims of sustainable development as set out in the Core Planning Principles and Chapters 1 and 2 of the NPPF. This is subject to an assessment of amenity, environmental and heritage issues which are set out below.

3 –Impact on visual amenity: The only changes to external appearance would be the installation of a flue and repositioning of plant.

The appearance of this row has undergone a number of changes over the years. The buildings are predominantly built to a common design but some have had dormers added as well as other additions and extensions in the rear yard, and there is also a variety of boundary treatments. It is considered that this row is therefore not as sensitive to alteration as some parts of Birkby Conservation Area. It is noted that a number of other properties have plain metal flues rather than colour-coated ones (including the property next door, no. 35) and so this is considered acceptable in this location.

It is considered on balance that it would conserve the character of the Conservation Area and visual amenity and that no specific conditions on design or materials are necessary. It would accord with the aims of BE1-2 and BE5 as well as the relevant NPPF and PDLP policies.

4 – Impact on residential amenity: Hot food takeaways can give rise to noise disturbance, especially from customer behaviour, as well as odours. This part of Birkby is strongly commercial in character, with industrial units on the other side of Filbert Street, although there are signs of possible residential use on some of the upper floors.

Hours of opening for the adjacent premises, no. 35, were restricted to 1130am to 11pm on application 2009/90278 for the use of premises to include a hot food takeaway. It is considered that the closing time is reasonable but an earlier opening time can be allowed in order to allow more flexibility. Environmental Health have recommended 0900 to 2300 hours which is considered acceptable and can be conditioned.

It can also be conditioned that details of an extract ventilation system are submitted and approved and that it is installed before the takeaway is first brought into use.

Subject to this the development would accord with the aims of Policies S14 and EP4 and the NPPF chapter 11.

5 – Impact on highway safety: The proposal represents an intensification of the site. There is a parking lay-by at the side of the road adjacent to the premises which can accommodate one vehicle and it is likely that peak demand for parking associated with the takeaway will be in the evenings, whereas for the shop it is likely to be during the daytime.

Given the sustainable location and the small size of the premises it is considered very unlikely that it would lead to highway safety problems.

It would therefore accord with the aims of Policies T10 and S14.

6 – Other matters:

Crime and disorder:
The Police Architectural Liaison Officer has no comments detrimental to the application and it is considered very unlikely it would give rise to increased crime, anti-social behaviour or fear of crime.

Refuse and servicing:
There is room to store refuse bins within the rear yard and deliveries of supplies can also be made here. The proposed takeaway may generate additional refuse but it is considered to be manageable.

Ecology:
The site is in the bat alert layer but the building has no obvious bat roost potential and the works would not affect the roof structure of the main building. It will be sufficient to add the standard precautionary note.

Conclusion

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.

This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development would constitute sustainable development and is therefore recommended for approval.

Recommendation – CONDITIONAL FULL PERMISSION

Decision Authorisation - Delegated Powers

Application Number: 2017/93914

Officer Recommendation: CONDITIONAL FULL PERMISSION

Conditions and Reasons

1. The development hereby permitted shall be begun within three years of the date of this permission.
Reason: Pursuant to the requirements of Section 91 of the Town and Country Planning Act 1990.

2. The development hereby permitted shall be carried out in complete accordance with the plans and specifications schedule listed in this decision notice, except as may be specified in the conditions attached to this permission, which shall in all cases take precedence.
Reason: For the avoidance of doubt as to what is being permitted and so as to ensure the satisfactory appearance of the development on completion, and to accord with Policies S14, BE1 and BE2 of the Kirklees Unitary Development Plan and Policy PLP24 of the Kirklees Publication Draft Local Plan.

3. The use hereby permitted shall not begin until details of the installation and/or erection of any extract ventilation system, including details of the methods of treatments of emissions and filters to remove odours and control noise emissions have been submitted to and approved in writing by the Local Planning Authority and the works specified in the approved scheme have been installed. Such works shall thereafter be retained, operated at all times when the takeaway/restaurant is in use and maintained in accordance with the manufacturer's instructions unless otherwise approved in writing by the Local Planning Authority.
Reason: To ensure that development does not result in loss of amenity to residential properties in the vicinity of the site arising from odours or noise, and to accord with the aims of Policies S14 and EP4 of the Kirklees Unitary Development Plan, PLP52 of the Kirklees Publication Draft Local Plan, and the National Planning Policy Framework – Conserving and enhancing the natural environment.

4. The use hereby permitted shall not be open to customers outside the hours of 0900 to 2300 Monday to Sundays
Reason: To ensure that development does not result in loss of amenity to residential properties in the vicinity of the site arising from noise disturbance at unsociable hours, and to accord with the aims of Policies S14 and EP4 of the Unitary Development Plan, PLP52 of the Publication Draft Local Plan, and the National Planning Policy Framework – Conserving and enhancing the natural environment.

NOTE: Construction noise. To minimise noise disturbance at nearby premises it is generally recommended that activities relating to the erection,

construction, alteration, repair or maintenance of buildings, structures or roads shall not take place outside the hours of:

07.30 and 18.30 hours Mondays to Fridays
08.00 and 13.00hours , Saturdays
With no working Sundays or Public Holidays

In some cases, different site specific hours of operation may be appropriate. Under the Control of Pollution Act 1974, Section 60 Kirklees Environment and Transportation Services can control noise from construction sites by serving a notice. This notice can specify the hours during which work may be carried out

NOTE: There is the potential for a bat roost to be present on site. Bats are a European protected species under regulation 41 of the Conservation of Habitats and Species Regulations 2010. It is an offence for anyone intentionally to kill, injure or handle a bat, disturb a roosting bat, or sell or offer a bat for sale without a licence. It is also an offence to damage, destroy or obstruct access to any place used by bats for shelter, whether they are present or not.

If bats are discovered on site development shall cease and the applicant is advised to contact Natural England for advice.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Application form			17-Nov-2017
Location plan	1614.1		17-Nov-2017
Proposed ground floor	1614.4	C	17-Nov-2017
Proposed rear and side elevations	1614.7	B	17-Nov-2017
Design and access statement			17-Nov-2017

Pursuant to article 35 (2) of the Town and Country Planning (Development Management Procedure) Order 2015 and guidance in the National Planning Policy Framework, the Local Authority have, where possible, made a pre-application advice service available, complied with the Kirklees Development Management Charter 2015 and otherwise actively engaged with the applicant in dealing with the application. The case officer did not undertake negotiations with the applicant as no amended plans or additional information were considered necessary.

Report Dated: 10-Jan-2018