

**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: 2018/62/92365/W

Site Address: 12B, Hillhouse Lane, Fartown, Huddersfield, HD1 6EF

Description: Change of use from bed shop to hot food takeaway

Recommending Officer: Sam Jackman

DECISION – conditional full 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.

Teresa Harlow

AUTHORISED OFFICER

Date: 19-Dec-2018

SITE DESCRIPTION

12b Hillhouse Lane comprises a single-storey building constructed in brick with a flat roof, which is subdivided into 2 retail units, with Barnis occupying the Bradford road frontage and the property facing Hillhouse Lane is currently vacant formerly occupied by a bed company.

The building is located on a corner site at the junction of Hillhouse Lane and Bradford Road. Vehicular and pedestrian access are taken from Hillhouse Lane which bounds the site to the north. There are parking spaces laid out on the Hillhouse Lane frontage, further hard-surfacing to the west of the building providing access to a block of four garages at the western end of the site and a further two garages outside the site to the south, or rear.

The wider area is in mixed residential and commercial uses. There are single storey dwellings to the rear, south and west of the site on Halifax Old Road, which are of brick construction. There are also two-storey dwellings on the north side of Hillhouse Lane with a few commercial premises. To the south is another retail unit forming the end of a terrace, while on the opposite side of Bradford Road are two storey terraced units which are of mixed commercial uses with some residential use on the upper floor.

DESCRIPTION OF PROPOSAL

The proposal is for the change of use of the vacant premises to a hot food takeaway. There are no external alteration proposed, apart from a flue incorporating 2 vents to the rear elevation adjacent to the outside store. Internally the display area would be subdivided into the kitchen and waiting area.

Subsequent details have been submitted including lighting and extractor fan information for the building. Proposed hours have not been specified.

HISTORY OF NEGOTIATIONS/AMENDMENTS RECEIVED

Following consultation responses from Environmental Health, the agent was given the option to either submit the details after the decision was issued, as a discharge of conditions application or address them as part of this application. The decision was taken to submit the details as part of the current application

An extension of time was requested due to the submission of additional information, which has been agreed by the agent until the 21.12.18.

RELEVANT HISTORY

2017/91132 - Erection of two storey side extension to form enlarged Class A1 shop at ground floor with office unit and residential flat above – Granted Conditionally

2017/93581 – Discharge of conditions 3 (render colour), 5 (boundary treatments), 10 (CMRA) on previous permission 2014/93209. Approved

2015/92782 – Proposed erection of two-storey building with shop at ground floor and office at first floor. Withdrawn because of officers' concerns about overdevelopment.

2014/93209 – Erection of first-floor and two-storey side extensions. Approved, not implemented.

PUBLIC/MEMBERS RESPONSE

Final publicity date Expires: 23.8.18

15 letters of representation have been received commenting on this application, with 6 against and 9 supporting the application.

A summary of the comments received against the application are set out below:

- Kirklees have a Healthy living & wellbeing Strategies, where Hillhouse already has a large number of takeaways
- This is a residential area with families and young children.
- We already have anti-social behavioural issues, selling of drug and alcohol, drug and alcohol misuse criminal activities in the area and this will increase by becoming a gathering point for youngsters.
- The constant stream of traffic restricting residents to park outside our own homes is unacceptable.
- Existing parking used by Barnis, so insufficient remaining.
- Smell from cooking.
- Excess of litter, overflowing of bins/ Increase in vermin, fly's, pests.
- Constant noise late at night.
- Already several takeaways in the area

A summary of the comments received supporting the application are set out below:

- It would reduce anti-social behaviour and add additional security to the area.

- It would improve the appearance of the area.
- It would bring more trade to existing businesses and create employment.

Councillor Sokhal requested an update on the application and was happy for the application to be approved.

CONSULTATION RESPONSES

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

- KC Environmental Health – Acceptable subject to conditions.
- KC Highways Development Management – No objections.
- KC Planning Policy – No objections.
- KC Public Health – No objection in principle.

POLICY

The statutory development plan comprises:

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

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 Development Plan for Kirklees currently comprises the saved policies within the Kirklees Unitary Development Plan (Saved 2007). 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 48 of the National Planning Policy Framework (2018). 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 (2018), 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 is designated as unallocated within a local shopping centre on the UDP Proposals Map and on the Kirklees Publication Draft Local Plan.

Kirklees Unitary Development Plan:

- S1 – Town and Local Centres

- S14 – Hot food takeaways
- T10 – Highway safety
- T19 – Parking
- EP4 – Noise-generating and noise-sensitive development

Kirklees Publication Draft Local Plan: Submitted for examination April 2017:

- **PLP13 – Town Centre uses**
- **PLP16 – Food and drink uses and the evening economy**
- **PLP21 – Highway safety and access**
- **PLP32 – Parking**
- **PLP47 – Healthy, active and safe lifestyles**
- **PLP52 – 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 24th of July, 2018, 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.

Chapter 2 – Achieving sustainable development

Chapter 7 – Ensuring the vitality of town centres

Chapter 8 – Promoting healthy and safe communities

Chapter 9 - Promoting sustainable transport

Chapter 12 – Achieving well-designed places

Chapter 15 - Conserving and enhancing the natural environment

ASSESSMENT

1 – Principle of development:

The proposed site falls within Hillhouse Local Centre within the Unitary Development Plan and PDLP. A change of use from a bed shop to a hot food takeaway, where hot food takeaways are regarded as a main town centre use and therefore should be located in a town, district or local centre. As the proposal is within the local centre of Hillhouse, it is in accordance with paragraph 86 of the NPPF, UDP policy S1 and Local Plan policy PLP 13. Paragraph 91 of the NPPF highlights that planning decisions should promote strong neighbourhood centres and active street frontages.

Within the Unitary Development Plan, the main relevant policy is S14 Hot Food Takeaways.

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. Also of relevance are UDP Policy D2, which states that decisions should consider impacts on visual and residential amenity and the character of the surroundings, EP4, which states that proposals for noise-generating uses close to existing noise-sensitive development should take into account the impact of projected noise levels – also promoted by NPPF Chapter 15 – and T10, which states that applications should not be allowed if they would create or materially add to highway safety problems.

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. 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, and subject to other criteria such as noise, fumes, and potential anti-social behaviour.

PLP47 states that healthy, safe and active lifestyles will be enabled by “working with partners to manage the location of hot food takeaways particularly in areas of poor health”. The other PDLP policies listed above predominantly cover the same areas of guidance as the aforementioned UDP policies.

This aim is also supported by Planning Practice Guidance – health and wellbeing. This contains the following specific advice:

1. Planning can influence the built environment to improve health and reduce obesity and excess weight in local communities.
1. Local planning authorities can consider bringing forward, where supported by an evidence base, local plan policies and supplementary planning documents, which limit the proliferation of certain use classes in identified areas, where planning permission is required.
2. Local planning authorities and planning applicants could have particular regard to the following issues:
 - a. proximity to locations where children and young people congregate such as schools, community centres and playgrounds
 - a. evidence indicating high levels of obesity, deprivation and general poor health in specific locations
 - b. over-concentration and clustering of certain use classes within a specified area

The general aim of creating and supporting healthy communities is also promoted by Chapters 2 and 8 of the NPPF.

Finally, under Section 17 of the Crime and Disorder Act, the Council acting as Local Planning Authority has an obligation to have due regard to the likely

impact upon, and to do all it reasonably can to prevent, crime and disorder. Section 8 of the NPPF states that the planning system should aim to achieve healthy, inclusive and safe places. Therefore the likely impact upon crime and disorder is a material consideration.

2 – Impact on character, function, vitality and viability of the local centre: Of the 38 commercial units observed at the last occupancy survey of this local centre, 26 were found to be in A1 (other than sandwich bar) use, and only 7 were found to be in hot food takeaway use where an additional 2 have been granted planning permission since the survey. It is considered that the change of use of this one unit would not lead to an excessive concentration of takeaways and would not adversely affect the retail mix or balance of the centre. It would therefore accord with the aims of NPPF Chapter 2 paragraph 8(a), Chapter 7, and Policies PLP13 and PLP16.

3 –Impact on visual amenity: The proposal is for a change of use which would in itself have no impact on visual amenity.

The plans show a flue to the rear which would be below the roofline and located away from the public highway. Refuse bins can be stored in the existing rear yard as indicated as staff parking on the plans.

Subject to the above being conditioned it would comply with the aims of Policies BE1-2, and PLP24 (a), and NPPF chapter 12.

4 – Impact on residential amenity: Hot food takeaways may give rise to noise disturbance from vehicles arriving and departing and from the behaviour of customers. This can usually be mitigated or prevented by restricting the opening hours. The application hasn't stated any opening hours as part of the application. Environmental Health considered that 11.00 to 0000 7 days a week would be acceptable, which could be considered excessive for this mixed residential and commercial area, However the adjacent ice cream parlour current opening hours are 12:00 until 00:01 which are compatible with the suggested hours, this should be conditioned to prevent noise disturbance of nearby properties. (Condition 3)

Odours, may also arise from the operation of the takeaway itself. There are no residential properties attached to the site however there are residential properties to the rear and front. Environmental Health initial comments, requested a condition with regards the flue, where these details have now been submitted and are acceptable provided the works are carried out in accordance with the report and are retained thereafter. Therefore the use would be able to operate, in accordance with a prescribed condition, without giving rise to any undue impacts on amenity by reason of odours, of nearby residents. (Condition 4). Subject to this it would accord with the aims of Policies S14, EP4, PLP52 and NPPF Chapter 15.

With regard lighting around the property, Environmental Health have requested an additional report, to control light glare or stray lighting. An additional report has been received however it appears it only relates to

lighting of the new sign. This would be dealt with as a part of an advertisement application. Therefore a condition is required for further lighting details to control any additional lighting around the building. (Condition 5)

With regard air quality the development has been assessed in accordance with the West Yorkshire Low Emission Strategy Planning Guidance. The size of the development is less than that of prescribed values set out in this document, which is why it is regarded as a minor development. Therefore it is often required that parking spaces include an electric vehicles charging point. The public parking area exists and is less than 10 spaces. Given this it is considered unreasonable to require the installation of an EVCP.

5 – Impact on highway safety: The site benefits from 7 formal parking spaces along the front of the building with staff parking to the rear, these spaces are shared by the adjacent ice cream parlour. However the staff parking currently isn't usable, due to the condition of the area, this should be conditioned so that it is a usable space. (Condition 7). The site received approval for the erection of a two-storey side extension in 2017 which would be more intensive than this application. Therefore highways have no objection to the proposal.

6 – Public health issues: According to IMD (Index of Multiple Deprivation), the site is within the 10% most deprived areas in Kirklees. The percentage of adults and children who are overweight or obese is below the Kirklees average but still considered to be high enough to be a cause for concern.

PLP47 (j) aims to manage the location of hot food takeaways. The reasoning supporting this is to seek to limit access to energy-dense food in order to encourage individual consumers to make healthier choices in what they eat, and thereby to discourage the development of obesity and related health issues including risks of developed chronic heart disease and type 2 diabetes. The provision of hot food takeaways within any one local centre, both in absolute numbers and as a percentage of all units, is therefore important in assessing public health impacts.

Hot food takeaway use within Hillhouse local centre accounts for 15% of the total number of units all commercial premises, and it is considered that the number reported does not represent a high concentration from the point of view of its likely impact on human health.

It is on the whole considered unlikely that the proposed change of use would contribute to significantly increased levels of obesity, excess weight and resultant poor health within the area. It would therefore be compatible with the aims of PLP47, the social objective of the planning system as set out in paragraph 8(b) of Chapter 2, and 91(c) of Chapter 8 within the NPPF.

7 – Other matters:

Crime and disorder:

Hot food takeaways can sometimes be a focus for low-level anti-social behaviour because they may act as a gathering place for young people who

may linger outside the premises either waiting to be served or consuming their meals. This may be more likely to occur where there is a local concentration of hot food takeaways or other evening economy uses and where there is already a recorded problem of crime or anti-social behaviour associated with these. In the event of anti-social behaviour occurring this could be dealt with under police powers.

8 – Representations:

A summary of the comments received against the application are set out below:

- Kirklees have a Healthy living & wellbeing Strategies, where Hillhouse already has a large number of takeaways.

Response: - This has been addressed in the report.

- This is a residential area with families and young children.

Response: - the impact on residential amenity has been assessed in the report.

- We already have anti-social behavioural issues, selling of drug and alcohol, drug and alcohol misuse criminal activities in the area and this will increase by becoming a gathering point for youngsters.

Response: - the principle of the use, from a planning perspective, is considered acceptable. It is considered that to refuse the application on the grounds of anti-social behaviour would be unreasonable. Nevertheless should there be instances of anti-social behaviour these would be controlled under other legislation.

- The constant stream of traffic restricting residents to park outside our own homes is unacceptable.

Response: - Several parking spaces are available to serve the use and a condition is imposed regarding the provision of staff parking. Given the location of the site close to a local centre and with good public transport links it would be unreasonable to refuse the application due to the inability to park outside a specific address.

- Existing parking used by Barnis, so insufficient remaining.

Response: - a condition can request that the staff parking is provided in addition to the existing parking to the front of the building. It is recognised the building would serve two distinct uses and the parking spaces shared. Notwithstanding this, with the addition of staff parking and again considering the location of the site it is considered that sufficient parking would be provided to avoid an unacceptable impact on highway safety.

- Smell from cooking.

Response: - Controlled by odour report

- Excess of litter, overflowing of bins/ Increase in vermin, fly's, pests.

Response: - There is no specific evidence that the proposed use would lead to an increase in these issues. The premise would be inspected under food safety legislation and any concerns regarding the use reported to Environmental Health.

- Constant noise late at night.

Response: - restricted hours will help prevent this

- Already several takeaways in the area

Response: - the level is acceptable to provide an appropriate mix within the local centre.

A summary of the comments received supporting the application are set out earlier in the report. These are noted.

9- 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: 2018/92365

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 Unitary Development Plan and policies PLP16 and PLP24 of the Publication Draft Local Plan.

3. The use hereby permitted shall not be open to customers outside the hours of 1100 to midnight on any day and there shall be no deliveries to or dispatches from the premises outside these hours.

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 unsocial hours, and to accord with the aims of Policies S14 and EP4 of the Unitary Development Plan, Policy PLP16 and PLP52 of the Publication Draft Local Plan, and the National Planning Policy Framework – Conserving and enhancing the natural environment.

4. The use hereby permitted shall not begin until the extract ventilation system has been installed in accordance with the approved report 'Extract and Ventilation Statement' by NMA dated November 2018. The extract and ventilation system shall thereafter be retained, operated at all times when the takeaway is in use and maintained in accordance with the manufacturer's instructions.

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, in the interests of visual amenity, and to accord with the aims of Policy S14 of the Unitary Development Plan, Policies PLP16 and 52 of the Publication Draft Local Plan, and Chapter 15 of the National Planning Policy Framework.

5. If any external lighting is required which does not include illuminated signage, a scheme which indicates the measures to be taken for the control of any glare or stray light arising from the operation of artificial lighting shall be submitted to and approved in writing by the Local Planning Authority before external lighting is installed. Thereafter the artificial lighting shall be operated in accordance with the approved scheme.

The scheme should include the following information:-

- 1) The proposed design level of maintained average horizontal illuminance for the site.
- 2) The predicted vertical illuminance that will be caused by lighting when measured at windows of any properties in the vicinity.
- 3) The proposals to minimise or eliminate glare from the use of the lighting installation
- 4) The proposed hours of operation of the lighting

Reason: To ensure that development does not result in loss of amenity to residential properties in the vicinity of the site arising from light pollution, in the interests of visual amenity, and to accord with the aims of Policy S14 of the Unitary Development Plan, Policies PLP16 and 52 of the Publication Draft Local Plan, and Chapter 15 of the National Planning Policy Framework.

6. The staff car-parking area as indicated on the approved plan shall be cleared of all obstruction, made good and shall be surfaced and drained in accordance with the Communities and Local Government; and Environment Agency's 'Guidance on the permeable surfacing of front gardens (parking areas)' published 13th May 2009 as amended or superseded before the development is first brought into use. The staff parking area shall be retained surfaced and drained in accordance with the aforementioned guidance and available for use thereafter.

Reason: In the interests of highway safety, to achieve a satisfactory layout, to minimise flood risk arising from an increase in surface water run-off and to accord with Policies D2 and T10 of the Unitary Development Plan, emerging policies PLP21, PLP22 & PLP24 of the Publication Draft Local Plan and advice in the National Planning Policy Framework.

NOTE: Healthy eating

Kirklees Food Initiatives and Nutrition Education (FINE) Project can offer FREE one-to-one support and consultancy or specific masterclasses (minimum number of businesses required) to fast food take-aways across Kirklees to enable them to assess where they can make improvements and implement positive change within their business. Requests for support to: Kirklees FINE Project 01484 221000 (ask for FINE Project) or email: fine.project@kirklees.gov.uk

NOTE: 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 13.00 hours, 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.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
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Plan Type	Reference	Version	Date Received
Application form			19.9.18
Existing layout and elevations / Location plan	01	B	19.9.18
Proposed layout and elevations	04	B	19.9.18
Extract & Ventilation System	Dated Nov 2018		9.11.18

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 requested the applicant submit details of ventilation and lighting arrangements.

Report Dated: 19.12.18

Coal – high risk