

16th November 2020

Planning Appeal – Full Statement of Case

Introduction:

Planning Application 2020/90302 – heard at “Virtual” Strategic Planning Committee July 15th, 2020

This appeal specifically relates to a refusal of Committee Members to vary **Condition 15 (Opening Hours)** included in the above application. This condition was originally imposed on the original planning permission for the site 2017/9188 and later varied on permission 2018/90876, to relate to a change in building use from the Southern Building to the Northern Building.

The Northern Building houses our Restaurant ***Devour at the Dyehouse***, aka Devour. (<http://www.devour.co.uk>). The Southern Building, other than a small office to the West edge of this building is at present unoccupied.

D&L Developments Ltd & Devour Ltd are owned by the same family.

Condition 15 reads as follows:

The hereby approved development shall operate in accordance with the following hours of use:

- Northern Building: 0930 to 2230 any day of the week
- Southern Building: 0900 to 2000 any day of the week
- Deliveries or dispatches to or from the site:
0730 to 2000 Monday to Friday,
0800 to 1800 Saturdays
- No deliveries Sundays and Bank Holidays

Reason: So as not to detract from the amenities of nearby residents and to accord with Policies EP4 and EP6 of the Kirklees Unitary Development Plan and policy PLP52 of the Kirklees Publication Draft Local Plan and policies in Chapter 11 of the National Planning Policy Framework.

Our application to vary, was for the following hours of use:

- Northern Building: (containing Devour Restaurant)
0900 to 2330 Sundays to Thursdays,
0900 to 0000 Fridays and Saturdays

And 0900 to 0130 Christmas Eve and New Year's Eve

- Southern Building: (***unchanged***)
Southern Building: 0900 to 2000 any day of the week
- Deliveries or dispatches to or from the site:
0730 to 2000 Monday to Friday,
0800 to 1800 Saturdays

No deliveries on Sundays or Bank Holidays

Decision Notice:

The refusal to vary the condition was made by Members of Kirklees Metropolitan Council Strategic Planning Committee, by virtual committee held on July 15th, 2020.

Although Planning Officers, Highways, Parish Council and Environmental Services had no objections and the recommendation to members was to approve, the decision notice (dated 9th September 2020) did not contain any detailed written information on the reasoning behind the refusal. As I understand, in such circumstances when elected member decisions are contrary to planning officer's recommendations, clear and comprehensive reasoning should have been given within the decision notice.

I have asked Planning Officers for clarification on numerous occasions, to enable us to directly address the "reasoning" in this appeal. However I have only received the following response:

"With regard to the reasons the variation of hours were refused this relates to what members discussed at the committee meeting and the potential for disturbance to the amenity of local residents with longer hours of use."

However this response does not specifically document the reasoning in relation the member discussions.

Therefore, based on the available virtual committee recording, I surmise the reasoning to refuse to vary was based on assumptions from members that the variation of hours would lead to **"further complaints of Noise Nuisance"** by local residents. An incorrect assumption resonated by _____, in advise given to members during the committee meeting, stating there was no evidence to support that claim.

"Have you got evidence to not support?" - _____.

Our Application:

We feel our application should have been approved by members on the following basis.

1. Support from Senior Planning Officers who recommended approval.
2. Environmental Services report recommended approval, stating the extended hours would not dually affect the amenity of local residents.
3. The one complaint for noise nuisance was made after the application was validated and later found to be unsubstantiated and dismissed by Environmental Services.
4. Substantial Sound Report information was supplied and accepted to support the application.
5. Our Noise Management Plan was accepted and approved.
6. There were several written testimonies from local residents of Royd Mill supporting our application. Making particular reference to the lack of any disturbance from the business, noise or otherwise.
7. Our current approved licensing hours are already 11pm (previously granted by this committee), a further half an hour later than the existing conditional hours of 22:30 closing.
8. The condition unreasonably and unfairly restricts the current and potential financial operation of the business to run as a Restaurant.
9. The extension of hours we are proposing are reasonable.
10. The current COVID situation, and the huge impact this has had on our business and the hospitality sector on the whole, makes the proposed extended hours essential for the recovery of our business and the ability to protect maintain the level of employment for the 30 plus full time and part time employees, who rely on Devour to provide stable and continued employment.
11. The committee members are seemingly happy to approve construction and our investment of hundreds of thousands of pounds into the site, its development, and renovation, improving the

amenity to local residents and of an existing rundown industrial site. Yet unfairly restrict, in relation to other businesses in our sector, both locally and nationally, our ability to reasonably recoup our investment. Not to mention the sizable contributions in the way of Council Business Rates, VAT and Corporate Tax revenues Devour provides for HMRC, which are obviously not proportionally related to our ability to generate income.

Virtual Committee Recording:

The full virtual committee Recording is available online at the following link:

<https://www.youtube.com/watch?v=-ON7SEH0wq8>

Or available in a shorter edited version, specific to Devour Applications, here:

<https://vimeo.com/470104284>

Password: **devour25**

Planning Officers Report & Response:

Planning Officers recommended APPROVAL.

Within the document ***“Report of the Head of Planning & Development”*** – planning officers and environmental officers specifically looked at the noise impact on extending hours, as to address the original Condition 15 reasoning set out in the previous decision notice – see Paragraphs 10.16 to 10.26 of the afore mentioned report.

In support of our application, we provided a Noise Impact Assessment, a Noise Management Plan, Lighting Survey and supplied a Sound Monitoring Survey Report, (as part of another application 2019/94030 to discharge conditions). The Sound report provided sound data relating to the sound emissions from the fabric of the main building and surrounding associated.

All supporting information was also assessed in detail by Environmental Health, and the Planning Officer made the following recommendation:

Paragraph 10:26

Subject to the conditions set out above the proposal is considered to have an acceptable impact on residential amenity and would accord with Policies LP24 and LP52 of the Local Plan and Policies in Chapters 12 and 15 of the NPPF.

The reference to ***“subject to the conditions set out above”*** refers to **Paragraph 10:25** in which there is a suggested implication of new conditions relating to ***“other activities associated with the wider operations of the premises”***.

The term **“Hours of Use”** in relation to a Restaurant business was clearly defined in the **Circular 11/95: Use of conditions in planning permission “Hours of Use (Restaurants) Paragraph 66** – and is specifically related to customers.

I will cover this issue in more detail later in this document, however we considered this an attempt to impose additional conditions upon the general trading and running of our business, were not only damaging and restrictive but also unnecessary, as the existing condition 15 seemingly already adequately covers deliveries to and from the premises.

It is worth noting that although the application to vary was refused, there was an attempt by planners to impose these additional suggested conditions in relation to “Other Activities” & “Bottle Disposal” within the decision notice for the Extension Application **2019/94096** which was approved at the same committee. However, these were removed once we expressed our concerns and questioned their necessity and validity of such an imposition.

Our Case for Appeal:

I have taken note of some of the comments, conclusions, statements and arguments against our application made by members and councillors alike during the meeting which we feel misrepresented the facts surrounding our application, objections to the applications offered no evidence to support such claims and influenced the refusal decision.

We feel that some members seemingly had perhaps already formed pre-determined opinions prior to the committee meeting. We also feel members made subjective and incorrect assumptions, regardless and in plain sight of the factual evidence to the contrary provided by officers. And more generally, misunderstood or chose to misunderstand the facts and arguments set out in support the application.

We feel these key areas, lead to the application being refused.

1. **Misleading Assumptions Surrounding Retrospective Planning** – although this shouldn’t impact directly on the application to vary hours of use – clearly, through comments made in the meeting this was something the committee wanted to be seen as “acting upon” and “clamping down” on unscrupulous developers who disregard conditions or planning rules. It was assumed, was one such developer.

We feel officers and representatives should have been clearer in what aspects of each application were retrospective. Clarifying the general incorrect assumption that all applications were in some way retrospective. For instance, in the pergola application, only the temporary storage units were in place prior to this application. Other works for the pergola area had begun, but only following months of delays since the application was validated back in December 2019, and therefore were NOT retrospective.

2. **Complaints of Noise Nuisance by Local Residents** – This is perhaps the most controversial and yet critical issue around the refusal. Throughout the meeting there were various false and misleading statements that complaints for noise nuisance were numerous and an ongoing problem for local residents at the site. Despite the sound evidence reports and local resident testimony to the contrary. In particular, made various statements and accusations which I consider were particularly misleading.

To date only one unsubstantiated complaint had been made for Noise Nuisance since the Restaurant opened in December 2018 (dated Feb 2020), and was made after the validation of the current application. This was confirmed by Officers and Officials of Environmental Health at the committee meeting. Information which we feel, again was either disregarded and/or ignored by members.

Furthermore, information uncovered via a **Freedom of Information Request** to KMC for all email correspondence in regard to involvement in our planning applications and surrounding enforcement issues, has uncovered the origin and perhaps strategy behind this one complaint made to Environmental Health and the recent allegations made to Enforcement Officers prior to the committee hearing dating back to 2019. Both were made by a local resident of Royd Mill, These emails unsurprisingly reveal documentary evidence that, not only did Environmental Health find no evidence and dismissed the complaint made by , but also that was complicit in making this complaint and has for a number of months been a driving force, behind what seemingly is an unjust and strategic campaign to demand Enforcement

Officers take action against Devour for relatively small and insignificant issues and unfairly derail and discredit our application, in order to influence the decision to refuse.

3. The above mentioned **Freedom of Information Request** has also uncovered, who currently sits on the Strategic Planning Committee and is also a ward member for Holme Valley South was, prior to the meeting, was involved in email enforcement discussions and planning enforcement allegations made against Devour by both and . in our opinion, should have declared this prior interest and removed himself from the meeting as a voting member. Clearly this involvement would question his ability to remain impartial, although this conflict of interest does perhaps explain his steadfast opposition to our application.
4. **Hours of Use** – a misleading and misunderstanding of the term, with incorrect assumptions on what specifically the original condition covered in regard to activities. This issue first came to our attention in February 2020, influenced again by **(Freedom of Information Request)** leading to false and misleading information, supplied to members. Officers referenced “Other Activities” not in relation to customer trading to both local residents and members under the guise of “Hours of Use”. Ultimately, we feel this was confusing, factually incorrect, and unfairly detrimental to our application.

Obviously, our contentious findings require some evidential and factual information to support the basis of our allegations, therefore unfortunately, in-depth information into the history behind our applications, through the various email threads provided as part of the Freedom of Information Request, detailing the involvement of and must be included in this statement.

Freedom of Information Request Findings and Application Background:

The decision and request for this Application and two other subsequent Applications (2019/94094 & 2019/94096) to be heard at Strategic Planning Committee, was made by , one of the three ward members for Holme Valley South. The other two members of the ward are who spoke in support of our application during the committee, and who, as previously stated, sat as voting member on the Strategic Committee.

(local resident) lives adjacent to Devour at Royds Mill, in Flat 9, on the third floor, on the furthest Eastern edge, some 40/50 metres away from our gated entrance on Luke Lane, and a further 50 metres from the restaurant entrance door.

has historically objected to our development (as is his right) going back to the original Planning Application back in 2017, which to be fair was understandable, as the development was something “new”. Many other local residents were also concerned.

However, it became apparent would continue take particular exception to the development. When, prior to work commencing in 2017, spoke to the owner of Devour, and proclaimed, ***“this will never work, I’ll see to that!”***

The Freedom of Information Request, was made on 27th August 2020 and dates back to July 2019 and contains various email threads between, both and other council representatives including and other Officials from Enforcement and Environmental Health, and give some very concerning insight into the depth of interference and involvement, undertaken by both and in particular, in all planning issues pertaining to Devour.

The following emails threads referenced in this document are in places redacted – with (*) used as a replacement.

On 9th July 2019 – first contacted – seeking and opening a new line of involvement into our business following just over 6 months of initial trading.

Sent: 09 July 2019 16:12

Subject: Devour - Thongsbridge - Opening Hours

Dear

Further to our correspondence last year on the above development have you any idea where I can find out when permission was given to extend the opening hours approved in the original planning permission?

Generally speaking, the gates open at 0800 for deliveries, and more often than not they are not closed until 1145-1215am when the last of the staff/customers leave. The business advertises that it opens at 0900am in its publicity. Last Thursday a 'cherry picker' was on site and working at 0600!

As I recall opening hours in the planning permission extended to 1000am to 1030pm, except for Sunday when it was to close at 8pm (it's usually nearer 11).

Also has there been a planning application for the large illuminated sign, car park lights and external lights all round the building that I have missed? I do recall they were supposed to keep the light down so as not to affect the bats, but the lights are on all night I think, even when there is no one there.

Many thanks

Then following confirmation of the hours from emailed with a list of alleged breaches of planning dated 17th July 2019.

"Dear

Please find attached a screenshot showing that Devour is blatantly advertising that it is opening at 9am on a Sunday morning, which is outside even the extended opening hours (which it would have been nice to have been consulted about).

As I said in my original letter the site is often open until after 1200am (1.5 hours after the permitted time).

There are other planning breaches which are (as far as I can see)

- 1) There is one building and two temporary structures which have never had planning permission*
- 2) The building as constructed is bigger than on the original plans*
- 3) The development is lit up like a Christmas tree, including wall lights, a large illuminated sign and extensive car park lighting, for which permission has not been granted.*
- 4) The layout of the building is different to that approved, meaning that the kitchen is at the road end.*
- 5) There are some pretty big and ugly ventilation ducts on the top of the building which were never on the plans.*
- 6) An extra car park has appeared on Woodlands Avenue, which may have some traffic implications.*

While we understand that people have to make a living there seems little point in having a planning process if the councillor's decision is not to be abided by.

For local residents the procession of taxis and cars late at night, the high light levels and the occasional smells are an unwelcome addition to what used to be a peaceful neighbourhood.

I think it is the duty of the council to enforce the conditions placed on the development, otherwise, there is little point in having a planning department."

contacted Kirklees Head of Planning and the issue was passed to enforcement.

*From:
Sent: 17 July 2019 12:29
To:*

Cc:

Subject: FW: Devour - Thongsbridge - Opening Hours

Some more information from . I have copied in () because there are issues with noise nuisance and opening times, and no doubt that will have some impact on the license.*

In relation to our recent correspondence around licensing here then is an opportunity to show me what Licensing can do to control a nuisance.

Please let me know what you can do?

Thank you

One thing to note here within this first exchange – is that in the initial email does NOT mention **"Noise Nuisance"** this is only mentioned in the forwarding email by . It is an assumption with no evidence.

Also it appears has some knowledge of planning procedure, however many of his listed accusations are in most cases factually incorrect.

statement: ***"In relation to our recent correspondence around Licensing here then is an opportunity to show me what licensing can do to control a nuisance."***

This does seem rather premediated and perhaps is in relation to other existing issues has with Planning and Enforcement on the whole – it seems pretty clear from this very brief exchange wants Devour to be made an example of, even before any type of investigation as to whether there is any truth to any these allegations has taken place.

This will be an ongoing "theme" from right up to and including his statement at Strategic Committee, approximately one year later. The term ***"Judge, Jury and Executioner"*** comes to mind. And finally, once again uses the term **"Nuisance"**.

Prior to becoming a Councillor at Kirklees worked in planning in Leeds – I think he has a great deal of knowledge in terminology and understands planning, environmental and enforcement law, and the steps to take to facilitate his opinions. The term "nuisance", in particular, has great relevance and significance to planning law.

Following these emails, in September of 2019, we (Devour) entered into discussions with Planning Enforcement to discuss the various accusations which predominantly centred around discharging existing conditions, rather than breaches of planning protocol which were deemed to be minor – we advised of our intention to develop the site further and our requirements to vary of "hours of use" to extend into the

evening, to ensure the viability and sustainability of the business. We acknowledged our mistake of advertising we opened at 9am and instead 9:30, and explained it was a genuine mistake after all the Southern Building initially had hours of operation from 9am, and therefore corrected our advertised opening times accordingly. We were also advised that in order to bring any discrepancies, which were small, in layout of the site in relation to the approved plans, should be submitted within the new applications we were planning to process. We were also advised submit an additional new application to discharge any the outstanding conditions in relation the original application.

At this time all our planning matters were being handled by our _____, and an initial planning application to vary the hours of use was made in October 2019. (Later to be superseded by the application in this appeal, to include sort minor changes in car park layout etc.)

October 7th, 2019 –

:

From:

Sent: 07 October 2019 14:11

To:

Subject: App 2019/93141 - Woodlands Mill, Luke Lane, Thongsbridge (Devour) - Variation of Conditions Hours

Dear

The above application has been received which is in your ward and which members have previously had in interests in the site. The details can be seen below:

App – 2019/93141

Site – Woodlands Mill, Luke Lane, Thongsbridge, Holmfirth, HD9 7TB

Proposal – Variation condition 15 (opening hours) on previous permission 2018/90876 for variation conditions 2 (plans) and 15 (opening times) on previous permission 2017/91888 for change of use, alterations and extensions to former mill buildings to form mixed use development comprising of food manufacturing, cookery school, cafe, shop, restaurant, cooking demonstrations/tasting areas and management office/suite. Outdoor seating areas, service yard, parking and associated landscaping works

Decision Level – Officer Delegated Powers

From:

Sent: 09 October 2019 15:57

To:

Cc:

Subject: RE: App 2019/93141 - Woodlands Mill, Luke Lane, Thongsbridge (Devour) - Variation of Conditions Hours

Dear

I take it this is a retrospective application to formalise what is happening at present, is that correct? Given the complaints I trust you are not going to recommend approval?

Please advise.

From:

Sent: 18 December 2019 16:05

To:

Subject: RE: App 2019/93141 - Woodlands Mill, Luke Lane, Thongsbridge (Devour) - Variation of Conditions Hours

Dear

Further to your e-mail below, we have received further information in relation to the above application which is attached and which has now been assessed by Environmental Services. Environmental Services have no objection to the extended hours of use subject to the site operating in accordance with the noise management plan. We are therefore minded to recommend approval of the application.

If you have any comments to make in respect of the application could you please let me know by Monday 23rd December 2019.

Kind Regards

*Deputy Team Leader (West)
Development Management
Economy and Infrastructure – Planning and Development
Kirklees Council
Tel: 01484*

*From:
Sent: 19 December 2019 15:04
To:*

Subject: RE: App 2019/93141 - Woodlands Mill, Luke Lane, Thongsbridge (Devour) - Variation of Conditions Hours

After all the breaches reported by neighbours do you honestly think this noise management plan will be adhered to? What weight do you apply to the needs of the neighbours in terms of amenity and noise nuisance? It seems to me that you are giving the neighbours nothing. And what action will be taken if there are further breaches? What can you do?

If the answer is 'nothing' then let's take this to planning committee so committee can see what is happening here.

We have a noise management plan at another premises and it has been about as much use as a chocolate fireguard. Is this one any better?

*-----
From:
Sent: 23 December 2019 14:06
To:*

Subject: RE: App 2019/93141 - Woodlands Mill, Luke Lane, Thongsbridge (Devour) - Variation of Conditions Hours

Dear

Environmental Health have considered the impact on neighbours and consider that the impact would be acceptable provided the Noise Management Plan is conditioned along with the longer hours.

The noise management plan can be seen at the link below:

[https://www.kirklees.gov.uk/beta/planning-applications/search-for-planningapplications/filedownload.aspx?application number=2019/93141&file reference=785611](https://www.kirklees.gov.uk/beta/planning-applications/search-for-planningapplications/filedownload.aspx?application%20number=2019/93141&file%20reference=785611)

Its appendix can be seen here:

[https://www.kirklees.gov.uk/beta/planning-applications/search-for-planningapplications/filedownload.aspx?application number=2019/93141&file reference=785612](https://www.kirklees.gov.uk/beta/planning-applications/search-for-planningapplications/filedownload.aspx?application%20number=2019/93141&file%20reference=785612)

If you did wish to make a request for committee could you please provide a planning reason. The application would have to go to strategic planning committee as they determined the original application.

Kind Regards

*From:
Sent: 02 January 2020 15:25
To:*

Subject: RE: App 2019/93141 - Woodlands Mill, Luke Lane, Thongsbridge (Devour) - Variation of Conditions Hours

*Thank you for your comments.
With regard to enforcing the management plan this would be follow standard enforcement procedure and complaints would be investigated.*

As far as I am aware EHS have not yet received any complaints about the site. But this would need to be checked.

Kind Regards

*From:
Sent: 02 January 2020 19:09
To:*

Subject: RE: App 2019/93141 - Woodlands Mill, Luke Lane, Thongsbridge (Devour) - Variation of Conditions Hours

Dear

*I am asking you if the management plan is enforceable. Can the content of the management plan be enforced?
Assuming you get complaints, when and colleagues come to look at the management plan will be telling me that it can be enforced or will be telling me that actually it cannot be enforced?*

If EHS have not received any complaints about the site, but Planning Enforcement has, does this mean that the joined up working arrangement between enforcement activities in the Council is still not working? That is, planning enforcement are not talking to EHS enforcement?

How many complaints has the LPA received about this site since they started building?

Please advise.

*From:
Sent: 03 January 2020 13:47
To:*

Subject: RE: App 2019/93141 - Woodlands Mill, Luke Lane, Thongsbridge (Devour) - Variation of Conditions Hours

*Dear
Happy New Year.*

Further to emails. To answer your question regarding the number of complaints the LPA has received I have checked our records and it appears to be one complaint, in relation to alleged building works and alleged breaches of the Construction Management Plan. The compliance team have not, to my knowledge, received any complaints directly or otherwise regarding any breach of the hours condition or associated noise.

Environmental Health are fully aware of the representations received on the planning application(s) however they have not received any complaints of noise since the premises opened. Irrespective of planning conditions, it is always open for complaints of noise nuisance to be made to Env Health to be investigated. Regarding the noise management plan, I will discuss with the case officer and we will get back to you in due course.

Yours sincerely

From:

Sent: 03 January 2020 19:17

To:

Subject: RE: App 2019/93141 - Woodlands Mill, Luke Lane, Thongsbridge (Devour) - Variation of Conditions Hours

Dear

If you only have one complaint recorded then officers have not been making a record of the complaints when they come in, or not keeping them. Totally ridiculous to think there has only been one complaint. It's been complaint after complaint ever since they started on site.

I despair at just how poor that enforcement section has been.

Why have staff not recorded the complaints?

We've had this at other sites. There is something seriously wrong down there. And you are tasked with sorting it out.

Good luck

This email chain clearly sets the tone of tactics when dealing with planning officials – obviously a Councillor should have an interest within their wards on planning issues but to claim:

“Given the complaints I trust you are not going to recommend approval?”

“If the answer is ‘nothing’ then let’s take this to planning committee so committee can see what is happening here.

We have a noise management plan at another premises and it has been about as much use as a chocolate fireguard.

Is this one any better?”

Doesn't seem like a “fair, reasonable & balanced” response to planning protocol from a public servant. He appears to be very dismissive of the information provided by the officer especially when informed that there has been NO complaints made surrounding noise nuisance, and clearly, is making subjective assumptions based on no factual evidence.

Into February 2020, requested a meeting with representatives of Licensing, Development Management Compliance, Development and Master Planning, and Environmental Health. was also in attendance. This meeting was held on February 14th, 2020 at 1pm.

From:
Sent: 29 January 2020 15:41
To:

Subject: Devour

Importance: High

Hello
There are now a number of planning applications for the above site, some are retrospective. I'd like to set up a meeting please to discuss them all with a planning officer and someone from Licensing and someone from () . I'd like to invite to attend.*
Can you please arrange this?

Thank you.

My colleague is the case officer for the current applications at Devour. He will be going out on site in the next couple of weeks and can make arrangements to meet about the applications at () property, if this is convenient to (*)?*

I can arrange a separate meeting with internal consultees and Ward Cllrs about the applications. I've discussed this with Complex Enforcement Officer. She has recently been appointed to lead on enforcement cases that span different Service areas, such as this, to provide a coordinated response to the issues involved. It would seem appropriate for () to attend any meeting we arrange.*

I hope these arrangements would be acceptable to you?

With regards
Team Leader
Development Management
Economy and Infrastructure: Planning and Development

From:
Sent: 31 January 2020 15:21
To:

Subject: DEVOUR Holmfirth

Hi guys

has approached () in planning to arrange a joint meeting between , licensing , planning and the complainant. (*) will inform that we will meet but as it's a live application the complainant will be visited separately. Looking on we haven't received any complaints re noise but seems to think you have some involvement?*

Complex Enforcement Manager
Economy & Infrastructure
Flint Street,

Hi (*)

When the original planning application was received, we had concerns regarding noise from the premises affecting nearby residents. It is considered to be a very quiet area at night and customers and vehicle arriving and leaving the site were considered likely to present a potential noise problem. We therefore recommended a condition that restricted the hours of use to prevent late night activity.

Their premises licence application was allowed with later hours than the planning consent despite our reservations regarding this.

An application for variation of the hours of use was subsequently made, () dealt with it. I understand that we were struggling to object to the additional hours in the absence of any complaints. There were two objections to the application and contacted them both for more detailed information. I understand that one (*) so wasn't directly affected by any noise. I don't think we received a response from the other objector.*

I accompanied () at a meeting with the applicant and (*) agent. They were more than willing to take steps to minimise noise. We suggested that they provided a noise management plan to support the application. They proposed signs at the entrance to encourage drivers / taxi to not wait at the gate and instead for them to enter the site and go to the pickup point near the entrance door which is well away from the apartments.*

We had a meal there recently and advised that people were being picked up at the entrance door area where there are good vehicle turning facilities.

I am unaware of any noise complaints being received by PNC.

Environmental Health Officer, Pollution & Noise Control

Sent: 31 January 2020 16:54

To:

Subject: Devour

Hi

I've had a look at the systems and no complaints have been received by them in relation to noise.

There were complaints during the construction phase from the building work but not the operation of the premises.

*Complex Enforcement Manager
Economy & Infrastructure*

From:

Sent: 05 February 2020 12:34

To:

Subject: RE: Devour Thongsbridge

OFFICIAL - SENSITIVE

Dear

I am the Complex Enforcement Manager, this new post is designed to co-ordinate cases which involve various Council departments, external agencies and/or have substantial Councillor involvement. Once I become involved in a case I will be the single point of contact.

In order for me to ensure that the right people are available for you to meet can you please tell me:

1. the exact nature of the complaint(s)
2. the number of complainants
3. what you would like to achieve from the meeting?

I have checked with the Environmental Health and Licensing teams and there has not been any previous complaints made against Devour other than during the construction phase.

There are also currently 3 live planning applications for the premises, which are progressing through the planning process where any objections raised will be considered.

I think it would be beneficial in the first instance for you to meet with myself and () from Planning Enforcement. Between us we can explain the actions that can be taken and guide through our processes and procedures.*

In addition to the 3 points above can you please let me know if there will there be anyone else that you will be bringing to the meeting, other than yourself and This will assist me in finding an appropriate meeting room.

Kind regards

*Complex Enforcement Manager
Economy & Infrastructure*

*OFFICIAL - SENSITIVE
Dear*

We have already established that the relevant Council services have not been keeping records of previous complaints. There have been numerous complaints since they started to develop the site. That goes for other sites too such as () and (*) for example, so please do not assume there have been no previous complaints.*

As far as I can tell the enforcement officers have not been taking enforcement action, be that planning, licensing or () . Neighbouring properties have very little if any faith left in the Council, so instead of me playing piggy in the middle we have a meeting with one of the residents present and we go through the history of the site and the issues that have arisen.*

*Then we look to you to sort the mess out.
I am not having an interim meeting. Let's just have the one meeting and get on with it.*

Thank you

Here are the minutes to the eventual meeting:

Multi-service meeting regarding Devour
Leadership Meeting Room, Flint Street Fartown
Friday 14th February 2020 at 13:00 – 14:30

Notes from meeting and actions to be taken

Attendees:

- (*) Group Leader Licensing Public Protection
- (*) Development Management Compliance Team Leader
- (*) Team Leader Development and Master Planning
- (*) Senior Environmental Health Officer, Pollution & Noise Control

Introduction

informed the group that the original plan was for a cooking school in a much larger building along with a footbridge to a second building. There were objections to the original application and Devour scaled down the plans and compromised to get development through. It was accepted reluctantly by the residents but since then they have done as they pleased. When Devour are challenged on anything they put in a retrospective planning permission, which just allow.

outlined his issues around planning and development.

Lots of neighbours have contacted about issue. Lots of residents are affected but elderly and not wanting to make a fuss. During the construction phase the hours were not adhered to and the recommendations in the Planning permission were ignored. Neighbours had to suffer months of disruption with construction vehicles on pavements. Police were called on several occasions, particularly when children were forced to walk in the narrow road because the pavements were blocked with contractor vehicles. A parking company was engaged to police the residents' car park. tried to discuss with company and construction firm but they never stuck to any of their promises such as making good a ruined lawn.

Devour have not stuck to the plans submitted, it is almost twice the size of the plans. The kitchen is housed in a much bigger extension that was granted (7ft wider and higher), this is also at the Luke Lane end of the building, nearer to the residents. Occasionally there are food odours including some from the wood firing pizza oven. There is an ugly array of extraction fans on the end of building. The cladding should have been slate, not tin, no sky lights along the whole of building.

The turning area for delivery trucks is not accessible as they built a refrigeration building in this area. Therefore there is noise from delivery vehicles from either the roadside or reversing beepers to turnaround. In addition, food has to be often moved by trollies.

Lights from building and car park encroach onto the riverside, which are left on all night. This should not happen as it is a bat corridor.

They have not built the herb garden, it is a bin area.

A bund has been placed around the car park to prevent flooding despite it been on a flood plain.

Royds Mill building has had 2 floods this year (may be a coincidence as the weather has been bad).

A new car park off Woodlands Lane has been constructed out of rubble so issues with where people are going to park.

As soon as Devour opened the hours of use of the business have not been adhered to. Often open until midnight and noise from queues of cars and taxis leaving at 11-11.30p m. Advertise for breakfast from 9:00 a.m. even though not allowed to open before 10am.

Deliveries start from 7am.

Wheelie bins being moved at 00:15. Open on NYE until 00:30.

They mislead with their applications e.g. numbers employed, number of vehicle movements, amount of public transport to the venue. Contractors are on site all the time even though they told KC they are not there on Mondays and Tuesdays.

On the latest plans where are they going to put the waste bins and where are the fire exits going?

Reducing an already insufficient car park with increase in buildings. Where are the contractors going to go during this work? Where will staff smoke? Windows facing the bat corridor, how can this work when there is supposed to be no light into this area? It is proposed to move the footpath on the corner so there are less places for people to cross the road.

Devour keep nibbling away at the original conditions, feels like they are doing this to finally get what they wanted in the first place. All previous assurances in relation to management plans have not been adhered to. No material considerations have changed since the first time the planning was granted so should not change its views on the building size and operating hours.

Planning Response – (*)

The legislation allows for people to do the right thing, which fits with KC enforcement policy of a graduated approach to enforcement. When challenged on the issues Devour have put in the necessary planning applications to remedy this. As with any business this strategy runs the risk of potentially having a plan rejected, in which case enforcement will be considered.

stated that planning do not monitor sites. (*) advised that all major sites are monitored and small developments are visited periodically if there is an officer in the area.

Planning Response

The original plan 2017/91888 was approved by strategic planning committee and was deemed acceptable in the green belt.

In 2018 the strategic committee gave permission for the internal plans (where kitchen was relocated) and change to some of the hours under application 2018/90876 and other external changes.

An extension to Luke Lane end of the site has been previously granted under application 2018/90877.

Currently 4 applications are being considered, these are 2019/94094 for containers and a pergola extension, 2019/93141 to change the hours of use, 2019/94096 to extend the property to the Luke Lane end of the site and 2020/90302 to vary the approved plans and change the hours of use. There have also previously been discharge of condition applications but these have been decided.

(*) advised (*) was not aware of 2018 application to change internal plans (2018/90876).

(*) advised that letters went out to residents in April and a site notice displayed. wanted to know if the roof cladding on original changed in 2018.

asked when do we consider taking enforcement action against what they have done?

Advised that the Act allows for retrospective applications to allow developers to do the right thing.

Visits were carried out due to the sensitive nature of this development and discrepancies were highlighted when these were carried out, hence the current planning applications.

and concerned that same planning officers have been dealing with the applications. They think that Planning Enforcement not strong enough and people that don't comply keep getting away with it.

(*) advised one inspector does not see through an entire scheme alone, the same officer can be used as it is more efficient as they are already familiar with the site but any decisions/work is checked by a team leader and the final decision is made by the committee.

noted that the planning officer decision carries a lot of weight with the committee.

Licensing response – (*)

The current licensing hours are:
9:00-23:00

NYE & Xmas Eve 00:30

Recorded and live music until 22:00

The legislation does not take into account the hours to be restricted based on planning use times. If there are issues with noise etc then the councillor can call for a review, however, this needs to be backed up with evidence on how this impacts on local residents.

The licence application went to a committee hearing and they granted the hours.

This site is a priority for officers to visit out of hours to assess that they are complying with their conditions. Officers have also been instructed to gather details of breaches in planning conditions and record any issues in relation to noise disturbance.

Pollution and noise control –

(*) advised that they have not received any complaints relating to noise, other than during the construction phase when it was first developed.

Officers will be able to assess for noise and light pollution if any complaints are made to the service.

Actions:

(*) – invited (*) and any other interested parties to submit a representation for the application for planning the hours as soon as possible.

– to supply with a central contact number to report complaints, or separate department contact details if one call is not possible.

Speak to Greenspace Action Team re food waste on pavement waiting for collection for a week on the corner.

(*) will ask officers to check when visiting the premises if the cars leaving around midnight, are staff or customers.

(*) – Explore with licensing any conditions relating to the moving emptying of wheelie bins late at night. To contact Devour in relation to this issue.

Before, I go into detail on the above and discussions pertaining to this meeting, I would like to draw your attention to the involvement of in these discussions.

Although I have no information as to any responses made by , given that he has been cc'd in every communication since July 2019, and was openly addressed in the first email of this chain:

“Dear

Further to our correspondence last year on the above development have you any idea where I can find out when permission was given to extend the opening hours approved in the original planning permission?”

It would be perhaps naive to think he has not been involved at all in any discussion. Nor has he excused himself from these discussion as you would expect a member of strategic committee to do.

Being cc'd in, by default, makes him directly involved and complicit in discussions and details relating to complaints and allegations made by and the continual demands and pressure to impose enforcement action on Devour by .

At the very least we feel should have disclosed this involvement at the start of the virtual meeting, as did who visited Devour a couple of days before this meeting. However, remained quiet, only to make a pithy remark to about going in disguise.

More appropriate action would have seen stand down from any involvement in this committee relating to Devour, he clearly could not take a fair and balanced view of our applications and remain impartial and quite frankly, he had seemingly already made up his mind before any information was given in our application. His various statements during the committee would perhaps confirm that assumption. We are looking to make an official complaint to the necessary department at Kirklees Council.

Going back to the minutes of the meeting above, the antipathy and overriding animosity from against our development is clearly evident – claiming ***“they have done as they pleased”*** and ***“Planning Enforcement not strong enough and people that don’t comply keep getting away with it”***

Many of the points raised by the resident in his statement at this meeting were based on his own opinion and factually incorrect and there seemed to be a misunderstanding and ignorance around what planning had agreed and approved at the site previously.

Whether or not members of the public should be present to engage at this level of meeting is perhaps I think up for debate – however it’s clear there is a concerning level of unreasonable “obsessiveness” in some of the accusations that are being made. It seems accusations can be made subjectively without clear evidence or foundation – and then become a matter of public record.

One interesting point however, and one which relates specifically to this application appeal was made by the Environmental officer who advised:

“(Environmental Services) have not received any complaints relating to noise, other than during construction phase when it was first developed” Adding that: “Officers will be able to assess for noise and light pollution if any complaints are made to the service”

Numerous times throughout the various email threads I have attached to this appeal – both from Planning Officers and Officials from various departments involved in discussions, there has been a constant re-iteration that THERE HAVE BEEN NO COMPLAINTS MADE FOR NOISE through trading activities since we opened in December 2018.

However, this is about to change! Following this meeting at 16:03 the following internal email was sent by presumably to Environmental Services:

From:
Sent: 14 February 2020 16:03
To:
Subject: RE: Devour Multi service meeting.docx

Thank you.

Much appreciated. Can you log a complaint on the system for 31st January that complained about the site via . Noise disturbance from cars leaving the premises late on an evening a number of times per week, past the planning hours after 11.00 and up until 11:45 some nights. Planning only granted for the site until 10:30.

Also deliveries as early as 7:30 a.m. causing a disturbance from reversing beepers.

Also log one from today's face to face meeting – the same as above, including fireworks on NYE after midnight and staff taking bins across the yard and scraping them on the floor late at night after 10:30.

Thanks.

Have we responded to planning on the application for extension of hours yet? If not we need to discuss with before submitting.

Economy & Infrastructure

And in confirmation, of the above I received this email from from Environmental on 22nd July 2020, obviously months, after the committee meeting, during my investigations:

Good morning,

Please find attached a digital copy of the letter I sent to you in February. It is our standard procedure to send out a letter to the property or premises concerned when a complaint is made to our service to make them aware that we may be investigating them and to ask them to contact us to discuss.

The complaint of alleged noise nuisance was made in person to our team on the 14th February 2020, one of the many ways in which we receive complaints to our service. The person who made the complaint was a member of the public who lives in close proximity to Devour. The details of the complaint at that time was listed as “Noise disturbance from cars leaving the premises late at night, deliveries as early as 07:30hrs, pulling waste bins across the floor late at night and fireworks after midnight on New Year's Eve”.

I wrote to the complainant on the same day as I wrote to Devour, on the 17th February 2020. In this letter I asked them to provide further details of the noise disturbance by keeping record sheets for a period of 1-2 weeks which they should then send back to me to review. The information provided on record sheets establishes whether or not our team will actively investigate the complaint.

No information for noisy activities affecting the complainant and their property was received and it was determined that noise nuisance was not something which was present or likely to be present at the time of the complaint. The investigation was then closed and no further complaints to our team have been received.

I hope that this information is helpful and what you needed.

Regards,

*Graduate Environmental Health Officer
Investment and Regeneration
Flint Street
Fartown
Huddersfield
HD1 6LG*

Going back to the Enforcement Meeting, on 14th February 2020. So now, approximately two hours after a meeting with both _____, where they were specifically told there have been no complaints for Noise Nuisance, and _____ specifically told Noise Nuisance could only be investigated if complaints had been made – a complaint was made;

Firstly, may I add, note the term _____ complicit in this complaint.

“Can you log a complaint on the system for 31st January that _____ complained about the site via

And secondly

“Also log one from today’s face to face meeting with – the same as above, including fireworks on NYE after midnight and staff taking bins across the yard and scraping them on the floor late at night after 10:30.”

These were logged as one complaint for:

“Noise disturbance from cars leaving the premises late at night, deliveries as early as 07:30hrs, pulling waste bins across the floor late at night and fireworks after midnight on New Year’s Eve”.

Although this is not the platform to dispute the actual contents of complaints, it must be said firstly:

- 1. Deliveries as early as 07:30 – Deliveries are permitted from 07:30 according to Condition 15.***
- 2. Fireworks after Midnight on NYE – Devour didn’t have any fireworks on New Year’s Eve.***

The other two allegations for ***“Noise Disturbance from cars leaving the premises”*** and ***“Pulling Waste Bins across the floor”*** – are conveniently subjective and harder to challenge unless you can provide specific Professional Sound Monitoring Survey Reports that specifically measure ***“Waste Bin Movement”*** and ***“Noise from Cars/Customers Arriving or Leaving Premises”*** in relation to residential amenity.

I have therefore recently commissioned, Two Noise Impact Assessments from

_____. One to measure and monitor customers, and customer traffic entering and leaving the site on a busy evening/night. **These are attached.**

APPENDIX 1 – NIA – 9041-20-9342-v1 Traffic, Devour, Holmfirth.pdf

And another report measuring ***“Wheelie Bin Movement”*** which is a necessary operation when moving food waste from the kitchen to the bin storage area at the rear of the site.

APPENDIX 2 – Devour, Holmfirth-Wheelie-Bin_260320.pdf

Both specifically measure and report on the impact to local residents, in particular Royd Mill. Both reports found sound emissions to be low and well within permitted levels and certainly no greater than the ambient noise generated from Luke Lane, which is a relatively busy road used throughout the morning, day, evenings and late at night, as are most public highways.

If then we take into account the actual fabric and sound insulation of each flat, the position of flat in relation to the Devour site, plus the testimony letters from other residents at Royd Mill, most being nearer to Luke Lane and Devour, which were attached to our applications, it does throw into question the validity of a "Noise Nuisance" complaint.

Seeing something happen is very different than hearing something happen and very different again to hearing something loud enough to travel from Devour to cause a legitimate nuisance local residents.

An additional further email from Environmental Health, has come to light, as an internal communication, and specifically relates to this alleged "Noise Nuisance" complaint.

Email sent: Feb2020

Good afternoon,

I have received records from relating to noise and activity from Devour restaurant in Thongsbridge. I have offered recording equipment to help monitor the noise, however he has stated that the volume of the noise is not loud enough to disturb much. Noise from the occasional car or bin movement is not affecting him or the use of his property and he does not want to stay up in order to record all happenings at the premises, which I understand and we would not expect him to do. He has also commented on the lighting being kept on after midnight but this is not affecting him in his home.

I have told him that I will pass on the records to yourselves as an example of the activity occurring when the premises is due to be closed. I have summarised the records below:

*Fri 14th Feb - 11:20-12:30pm - Taxis and cars leaving
Sat 15th Feb - 11:00-00:00am - Car park still in use, taxis leaving
Sun 16th Feb - 11:40pm - Site still in operation
Mon 17th Feb - 00:30am - Car at gate, gate closed noisily
Wed 19th Feb - 10:25am - Lorry with reverse beeper. 13:30 Lorry with reverse beeper.*

' main complaint is that the premises is operating outside of their conditions, not necessarily that it is affecting him. He does not feel the need for the level of noise to be investigated by us but I have advised to get back in touch with me in the future if is having problems with the noise.

Kind regards,

Graduate Environmental Health Officer

Following this and the other information I have gathered, I contend, in relation to this appeal, this was a strategic and calculated complaint made by for the benefit of , whom I suggest was and is fully complicit. In our view this is a strategic tool to derail our application and give grounds to dispute approval of our application to vary Condition 15.

The last email clearly undermines the validity of the complaint for Noise Nuisance:

"I have offered recording equipment to help monitor the noise, however he has stated that the volume of the noise is not loud enough to disturb much.

Noise from the occasional car or bin movement is not affecting him or the use of his property and he does not want to stay up in order to record all happenings at the premises, which I understand and we would not expect him to do.

He has also commented on the lighting being kept on after midnight but this is not affecting him in his home."

Environmental therefore dismissed the complaint:

No information for noisy activities affecting the complainant and their property was received and it was determined that noise nuisance was not something which was present or likely to be present at the time of the complaint. The investigation was then closed and no further complaints to our team have been received.

Despite this information, during the committee meeting there were various references made about complaints and assumptions of Noise Nuisance made by _____ and _____ in particular. Again, all without foundation, and all instrumental in my opinion to the refusal decision made by the committee.

During the Strategic Committee Meeting members were told via a statement from _____, Environmental Health Officer as to the outcome of the complaint – members seemingly chose to ignore.

"wasn't any degree of how noise was disturbing"

"cannot substantiate any nuisance from the premises."

And when _____ clearly warned members that a lack of evidence to support Noise Nuisance claims, could lead to grounds for appeal – members still chose to ignore the warning.

"Have you got evidence to not support?"

In my opinion, _____ who is not a planning professional on any level, via _____ has been given a vastly disproportioned voice in regard to planning issues relating to Devour. The various email chains I have uncovered demonstrate this assumption, especially following the meeting with enforcement in February

I have in my possession a multitude of direct emails to various departments at Kirklees used for planning, enforcement and licensing from _____ relating to the day-to-day trading activity of our business. Complaints about oil storage, contractor parking (regardless of whether, they are working for Devour or not), Lighting Levels, Signage and of course when and at what time staff leave the premises and gates are locked. It's clear Devour has become a little bit of a hobby for _____, and his concerns go way beyond what would be deemed to be reasonable.

Further and in light of _____ accusations, investigations have taken place, from Enforcement and Licensing, with "surprise random" visits made to Devour by official representatives – yet unsurprisingly, there has been no evidence of breeches and no licensing or enforcement action has deemed to be necessary.

It has always been my understanding that Councillors and members alike should take a balanced and representative view of the wider public interest with regard to planning, yet _____ has disregarded the vast majority of other local residents of Royd Mill who have written open letters of support for Devour in regard to the three applications that were presented.

Although not unusual, I would have thought it is perhaps more of a rare occurrence to receive a supportive planning letter than an objectional letter. Objectors, in my experience are generally driven to be more vocal.

Various redacted full letters of support are available on the Kirklees planning portal and are attached across the various three applications; however, I've taken the liberty to list some of the key points raised in respect to our application to vary, and specifically in relation to noise generation:

"Since moving into my apartment I have never had any disturbance of any kind and I very much appreciate the convenience of having a restaurant on the doorstep. _____, which I live in, has double glazing and as my apartment is the nearest to the Devour restaurant, I would be the first to complain if there was any likelihood of my discomfort owing to traffic passing near to my patio garden, which adjoins Luke Lane.

I look forward to the next development of devour, including the extended hours, knowing that it can only benefit locals and visitors alike"

"We live in a second floor apartment which directly looks on to the development at Devour and as such we would be the most affected by any form on noise or nuisance caused by customers of Devour. I would like to state categorically that we have not been adversely affected by the day-to-day trading of Devour in any way.

We hear nothing from our flat even on busy Friday and Saturday nights."

"In conclusion we can wholeheartedly support all of the current applications awaiting approval including the extended opening hours. Devour is a fantastic local asset and we need to ensure that it continues to flourish."

"We are lucky enough to have the largest balcony in Royds Mill and we face on to the road. I have to stress that at no time have we heard or noticed any change in the traffic usage or have had any issues with noise from customers or deliveries. The only thing that we see is a massive improvement of the immediate area, including a smart carpark that used to be a waste ground, a beautifully designed building that sympathetically fits into our area.

We wholeheartedly support them in their current applications, the variation in opening hours, and the outdoor garden areas in particular. We feel again that this will only improve our local surroundings.

Why should the voice of a minority, spoil it for the voice of the majority."

There are four flats at Royd Mill, which directly overlook Luke Lane closest to the Restaurant entrance. The fourth and middle flat has been vacant until August this year. So we have three of the four flats openly stating there are no noise issues.

These three statements, do call into question how _____ could make the following assertion to the committee members:

"The residents to the front of the apartments have more problems from the site with noise nuisance than the residents to the rear of the apartment"

Clearly this assumption seems to be wholly incorrect and without foundation.

The next two statements come from letters from residents who live adjacent to the Southern Building, but again looking out on to Luke Lane – some 30 metres nearer to Devour than Mr Green Hughes's apartment.

"As stated previously, being one of the closest local residents to site, my input at this time would I think carry a great deal of validity. Therefore, I would like to categorically state I have not been adversely affected by the day to day trading of Devour in any way.

I hear nothing from my flat, during opening hours, even on a busy Friday or Saturday night. Noise from traffic etc, has remained at a constant to normal expected levels, we do after all reside on a roadside property, and all flats in our building are sound proofed in some manner with double glazing etc- I haven't noticed any spike or detrimental effect in any noticeable way since the site opened some 18 months ago.

Deliveries to the site, come and go with little fuss, as I understand the turning circle at the rear of the site, negates any adverse effects on road movement. "

"As one of the closest apartments to the Devour site, I would like to say that the development has not affected our living in any way at all.

I am aware that residents were worried about the road usage and possible noise the development would bring but I have to say that we do not hear any noise from the restaurant itself, regarding deliveries or dust bins!, neither do we find any noise from customers arriving /leaving. Luke lane is and always has been in our three years of living here, a busy little road which people use to pass through and therefore the restaurants presence has made no difference to this at all. "

These further statements were also received by Kirklees in support from other Royd Mill residents.

"Now that this phase is complete and Devour has been up and running for 18+ months with its beautiful garden area along by the river and the tastefully rebuilt Dyehouse I can categorically state that noise levels from customers coming and going at any time of day or evening is no greater than before construction of the property. I can also categorically state that we do not smell any exhaust fumes from the kitchen extract system as we do not hear any music from the restaurant.

With regard to the planning applications put forward I would have no hesitation in granting permission for the buildings or the extension of the opening hours. "

"When the first planning application was submitted for Woodlands Mill I had a mixture of support and concern and wrote to express those at the time. My support was in regard to bringing into use a building that has lay derelict for some considerable time and was only ever likely to progressively become more difficult to convert other than for housing and for the potential to create jobs in an area with limited other opportunities. My concerns were in regard to traffic use on a difficult bend, and the potential for increased noise from extra traffic and patrons arriving and leaving the new establishment.

In regard to those concerns I am very pleased to say that they turn out to have been unfounded – there may be limited additional traffic and there may be limited additional noise – but I live directly opposite the site and can honestly say that I have noticed no adverse effects. "

“We are aware that a complaint and objections have been made by one particular resident, which we find hard to comprehend.

Luke Lane is a busy road and always has been, we have not noticed any increase in traffic or road noise from taxi’s cars or customers leaving Devour, and the only time you could possibly smell the restaurant is to open the front door and certainly food and kitchen smell does not reach our apartment.

We fully support Devour with their current planning applications and extension of hours and look forward to visiting again soon”

It is quite evident our application had a considerable amount of support from local residents of Royd Mill. Of the Fifteen flats, bearing in mind some of the flats were unoccupied at the time, our applications had support from residents of **EIGHT** of the flats - yet statements to the contrary made in particular by to other members of the committee simply gloss over this support. The application case officer, made aware of this support in an email on 6th June 2020 in this particular paragraph:

“I would also like to draw your attention to additional comments that we have recently received in support of the applications at the site, I’ve attached these for your information.

These have not yet been fully redacted so I can only share the them with you at the moment but they will be uploaded to the website later this week for the wider public to review. I can however confirm that they have come from residents of the adjacent Royd Mill.”

So, in conclusion to the matter of Complaints regarding Noise Nuisance from Local Residents, Noise issues being the overriding reasoning behind Condition 15 relating to Hours of Use, there is actually very little evidence to support the claim there is or has been an ongoing issue regarding noise from our premises at Devour.

We have provided sound reports which substantiate our application, we have numerous residents all stating categorically there are no problems from our site relating to noise issues, and Planning Officers and Environmental Health Officials has professionally assessed and evaluated our application and have no objections to the variation and have recommended approval.

Yet we have one resident who has made a complaint for noise and objected to our applications. He has provided no evidence in support of any allegation for noise and has declined to provide evidence to support his complaint. Then finally, has stated to Environmental Officers that actually noise is not an issue from the site. There is a very strong argument to say this complaint was in fact Malicious and False, and should have been disregarded by members of the committee.

Hours of Use:

The remaining matter to address, of the points I have listed, which somehow, has been entwined within this application, is the actual definition of “***Hours of Use***” in relation to Condition 15.

The definition does question the validity of the majority of the alleged planning condition breaches that were reported to enforcement by EGH. i.e.: cars being on site, locking up etc.

What I find particularly disturbing in this matter, when reading through email correspondence, is that yet again seems to be dictating to officers planning policy by suggesting planners impose additional planning conditions to enable Enforcement the power to prosecute our business for breaches –

which in fact, were not breaches at all, and therefore impossible to enforce. This does appear to be an ongoing source of frustration for .

Prior to the committee meeting, Planning Officers began suggesting to us that the “Hours of Use” related what I have later understood to be “Hours of Operation”. Stating that the condition actually meant, everyone, including customers, staff, even the owners should be out of the building and gates locked by 22:30! Obviously a very unrealistic and unreasonable demand for a hospitality business.

At the time, we did not question this and tried to explain that obviously as a restaurant following closing to customers at 22:30 we needed to be able to clean down areas, cash up etc, various activities associated and instrumental in running a Restaurant business, and when ask to estimate timescales we said that approximately an extra hour would be required. This extra hour, without our consent was then deemed to be “added” to our application to vary, in letters to local residents and statements made at the meeting from both and to a lesser extent, although still relevant to members by planning officers.

Only later following the Freedom of information request, have I understood what were the real motives behind this apparent “new” stipulation.

One June 9th, 2020, one month before the committee date sent the following email:

From:
Sent: 09 June 2020 18:49
To:

Subject: DeVour

Importance: High

Hello,

I hope you are well. The owners of Devour have once again made contact with me and made a suggestion. I have been contacted by () who is (*) I understand owns the site. I said I would raise their suggestion with 'the objectors'. But I thought I'd put it to you first.*

Once the Covid restrictions are eased on 4th July and they can start trading again with social distancing they will be down to half their capacity. I think that is a fair assumption as other companies in the restaurant trade say the same. DeVour want to make use of the Pergola, outdoor eating area, to maximise the number of tables they can use. I have asked them if they would concede on their extended closing times for this outdoor use, so that the closing times would remain as they are at present. I have not checked what the closing is currently.

The pergola is one of the outstanding retrospective planning applications.

*Can you please check the closing times in relation to the pergola?
Are they any different to the application to extend the closing times for the site as a whole? For inside the building where noise will be less of a problem?*

I think the current is 10.30pm and the proposed is 11.30pm. Is that correct?

If DeVour concede to keep it at 10.30pm for the pergola eating area I am hoping and the other objectors will let the pergola application be decided by officers. I have not spoken to yet as I wanted to check the times with you.

DeVour are keen to have a dialogue and closer relations. I said I would try.

Can you let me know?

Thanks

From:

*Sent: 10 June 2020 10:16
To:*

Subject: RE: DeVour

OFFICIAL – SENSITIVE

Dear

() has asked me to respond to the specific points raised in your e-mail below given my role as Case Officer on the applications. You are correct in your assumptions on the proposed hours of use, other than they would like to open later in the building on Fridays and Saturday. I have set out the hours below.*

The hours of use of the proposed Pergola (2019/94094) are:
• *9am to 10.30pm any day of the week.*

These are less to what is sought for the restaurant building where it is proposed to operate:
• *0900 to 2330 Sundays to Thursdays,*
• *0900 to 0000 Fridays and Saturdays and*
• *0900 to 0130 Christmas Eve and New Year's Eve*

I would also like to draw your attention to additional comments that we have recently received in support of the applications at the site, I've attached these for your information. These have not yet been fully redacted so I can only share the them with you at the moment but they will be uploaded to the website later this week for the wider public to review. I can however confirm that they have come from residents of the adjacent Royd Mill. I you would like any further information then please contact me or ()*

Kind Regards

*Development Management
Economy and Infrastructure – Planning and Development*

From:
Sent: 11 June 2020 10:46
To:

Subject: RE: DeVour

OFFICIAL – SENSITIVE

Dear ()*

Thank you for that. What are the current opening times?

From:
Sent: 12 June 2020 07:36
To:

Subject: RE: DeVour

OFFICIAL – SENSITIVE

Dear

The current approved hours of use are - 9.30am to 10.30pm any day of the week

Kind Regards

From:

From:

Sent: 12 June 2020 20:17

To:

Subject: RE: DeVour

OFFICIAL – SENSITIVE

Thanks

Can you define what approved hours of use means? Are these operational hours, in other words is it doors locked at 10.30 pm or would you allow a cleaning up period?

For Friday and Saturday the new proposals are 12pm from 10.30pm, but they want an hour cleaning up time after 12 which means doors locked at 1am. That is going to have an impact on neighbouring properties. Emptying bins, car doors, taxis etc.

Were you aware of this? Did you appreciate that the doors locked time was no earlier than 1am Friday and Saturday and no earlier than 12pm any other day?

How would you enforce this?

Just remind me what the licensing hours are?

Thanks

From:

Sent: 15 June 2020 13:52

To:

Subject: RE: DeVour

OFFICIAL – SENSITIVE

Dear

The approved hours relate to the use of the site as a restaurant so they relate to customers coming and going.

However moving forward we could be more specific in terms of other activities at the site if it was considered appropriate, such as restricting other activities at the site like emptying bins and cleaning etc. We could also attach different hours of use to the outside area if required.

With regards to those other activities the applicant has provided a noise management plan which sets out that bins will not be emptied beyond 10pm and whilst there would be some activity beyond the closing time this would for the most part be confined to be within the building where levels of disturbance would be relatively low.

The licencing hours are 9am to 11pm, further details can be seen at the link below:

<https://licensing.kirklees.gov.uk/PAforLalpacLIVE/1/LicensingActPremises/Search/7339/194197?Licence=False>

With regard to enforcement it would be the same as all other sites if a complaint was

received this would be investigated to discover if a breach had occurred and if so appropriate action would be taken from there.

I hope the above is of assistance.

Kind Regards

Development Management

OFFICIAL – SENSITIVE

Dear ()*

So far you have taken no enforcement action so I find it hard to believe that you would in future. You have a planning application in for change of hours only because the applicant has not stuck to the permitted hours and complaints were received. But you are recommending approval for the revised hours. No interest in getting them to stick to the 'operational hours' agreed in their original permission approved by committee, by councillors. Allowing them to extend their hours as it suits them. So it is hard lines if you are a neighbour trying to sleep.

You will have to nail this down to have any chance of taking enforcement action. The condition has to be specific. Not subjective, not what's appropriate whatever that means, it has to be specific. At the moment we have an application with a closing time of 11pm Sunday to Thursday and 12pm Friday and Saturday, but that applies to customers only.

Staff can remain in the building for an undetermined time. That means neighbours will be subject to noise nuisance from cars and taxis when staff leave which could be 1am, 2am whatever they please. You cannot enforce it because it is not stipulated.

Will you go back to them now and tell them you need to introduce other conditions on staff and the owners leaving the property or will you just leave it to chance, and wait until there is another complaint?

If we do not nail this now it will go on and on and on. And like other sites where there has been no planning control the number of complainants will rise. We have seen it before.

So what are you going to do?

On top of all this they will have 15 special events licenses taking them to late closures. They have agreed with me to restrict these to 12pm closures, but they still want to stay open for another hour to clean up. If there is no condition that could go beyond one hour.

How can you enforce this?

*From:
Sent: 16 June 2020 08:05
To:*

Subject: RE: DeVour

*OFFICIAL - SENSITIVE
Dear*

I agree with you that we need to ensure that the planning condition on any new permission is specific and clearly sets out when customers and other activities at the site should end by.

This will help all those involved or affected by the development.

Currently I have not drafted the condition as the applications are ongoing, but we can be specific and set out limits of the other activities such as cleaning, food preparation

maintenance etc. Then if activities go beyond those hours then action could be taken

The issue of enforcement will be investigated by the Compliance Team and if there is a breach of hours then they can take appropriate action if required.

With regard to the special events licences these events would still need to accord to the planning hours of use. It is one reason why the agent has specifically set out longer hours on Christmas Eve and New Years Eve within their submission.

If you have any other questions then please let me know.

Kind Regards

From:

Sent: 19 June 2020 17:04

To:

Subject: FW: DeVour

OFFICIAL – SENSITIVE

Dear

Further to my e-mail below I am currently working on my committee reports and just wanted to inform you of the type of hours of use conditions that will be recommending and wondered whether you had any additional comments which you would like to make in respect to them?

The hours conditions would be:

1. The hereby approved development shall not be open to customer/patrons outside of the following hours:

- Northern Building:*
 - o 0900 to 2330 Sundays to Thursdays,*
 - o 0900 to 0000 Fridays and Saturdays and*
 - o 0900 to 0130 Christmas Eve and New Year's Eve*

- Southern Building:*
 - o Southern Building: 0900 to 2000 any day of the week • Deliveries or dispatches to or from the site: 0730 to 2000 Monday to Friday, 0800 to 1800 Saturdays • No deliveries on Sundays or Bank Holidays*

2. Deliveries or dispatches, including the collection of waste to or from the hereby approved use shall not operate outside of the following hours:

- o 0730 to 2000 Monday to Friday,*
- o 0800 to 1800 Saturdays*
- o No deliveries Sundays and Bank Holidays*

3. No activities shall take place within or outside either of the northern or southern buildings or associated land of the hereby approved development, including for the preparation of food, stock control, cleaning and maintenance outside of the following hours:

- o 0700 to 0030 Sundays to Thursdays,*
- o 0700 to 0100 Fridays and Saturdays*

I am away on annual leave next week so if you would like to discuss these further then please contact

Kind Regards

Development Management

OFFICIAL – SENSITIVE

The times you are giving in 3 are not acceptable.

You have a 7am start. They offered me an 8am start. So why do they now need two hours before opening?

How do you expect the people living opposite to get any sleep with noise after 12.30 pm every night of the week when they lock up?

It is a far cry from the times committee members originally set for operational hours. There is no regard in your recommended times for the neighbours. This is not the middle of town. It is a rural location in a residential area.

They also offered me closing at 11pm Sunday to Thursday in 1.

This has just got worse not better. Why?

Following this chain of emails, [redacted] made a request for planning officers to re-advertise the **“Hours of Use”** times, two weeks prior to the Committee Meeting date on July 15th 2020, to now include an additional hour for “clean up” on top of the actual application we made. As such [redacted] head of Planning, sent a letter out to Royds Mill residents to inform them of this of the change in times attached to our application.

As applicants we had not made this change to our application, this was imposed on us and if it were not for the letter being sent to us by [redacted] we would have had no knowledge of letter being sent out to residents of Royd Mill. Please note the majority of responses to this letter were again in favour and supportive, regardless of the times stipulated being extended by a further hour.

During the committee meeting, there was a great deal of confusion from members as to the actual hours that were being applied for – yet again despite officers detailing the activities and times – [redacted] chose to quote the additional hour on top of our application, during his statement, seemingly stating the hours of our application were in fact 12:30 weekdays and 01:30 Friday and Saturday.

I must admit, in hindsight, we as applicants were quite naive in respect to the **“hours of use”** issue – we took the information being presented to us by officers prior to the committee meeting, in good faith and confirmed that yes, after customers had left we would need time, approximately one extra hour, on top of the hours we had applied for to complete lock up etc.

What we didn’t realise until further down the line, that this was an attempt to provide and instigate specific time restrictions for “other activities” to clearly measure future breaches conditions and make enforcement possible. There was a pretence that this would form some sort of clarity for residents, but to the contrary despite planners conceding that such activities took place in the fabric of the building and would not cause any issues for neighbours regarding noise – it was more likely, as the email chain suggests, that these were included to specifically to appease [redacted] demands.

On 8th August 2020, post Committee Meeting, I sent the following email, to [redacted] prior to receiving freedom of information request data:

Hi

Following my subsequent conversations with you both, I mentioned to [redacted] that I'd put something down on paper in order to get some clarification to you both as to our current position in relation, specifically, to conditions you are proposing to **Application 2019/94096 (Extension)** & also definitions arising from **Application 2020/90302 (Opening Times)**.

Please don't take any of this as a provocative argument against either of you and planning on the whole, as you know [redacted] appreciate your efforts in supporting Devour and hopefully if I can get some clarity so we may be able to find some sort of compromise going forward.

I've been doing a bit of reading into national planning guidance and specific wording used in past applications and decisions - I have a few questions/statements etc.

APPLICATION: 2019/94096 – Extension

As far as I understand from the meeting the application was approved, to run concurrently with existing hours of the main restaurant building. This has been stated in proposed Condition 4 of your email to [redacted] sent 22-7-20.

So why are the following conditions looking to be applied to this application which cover the main North Building and Southern Building also. This was not implied within the application and has no relevance to these buildings?

There are previous conditions already in place. I do not understand how these can be legitimately applied to this application for the extension.

6. No activities shall take place within or outside either of the northern or southern buildings or associated land of the hereby approved development, including for the preparation of food, stock control, cleaning and maintenance outside of the following hours:

- **0700 to 2330 any day of the week.**

Reason: *So as not to detract from the amenities of nearby residents and to accord with Policies LP24 and LP52 of the Kirklees Local Plan and policies in Chapter 15 of the National Planning Policy Framework.*

Obviously, if the wording of this was to be a variation of "Hours of Use" in Condition 15 of Application Number: **2018/70/90876/W** that would be acceptable, if not then this would need to be removed as this contravenes the condition already in place that covers such activities and therefore is in fact a proposed "extra" condition to the main building which is damaging and detrimental to our business which of course is unacceptable.

7. The outside movement or outside disposal of bottles shall not occur outside of the hours of:

- **0900 to 2100 any day of the week.**

Reason: *So as not to detract from the amenities of nearby residents and to accord with Policies LP24 and LP52 of the Kirklees Local Plan and policies in Chapter 15 of the National Planning Policy Framework.*

Again, this should and is covered in the Deliveries and Dispatches to and from the site in Condition 15:

**Deliveries or dispatches to or from the site: 0730 to 2000 Monday to Friday,
0800 to 1800 Saturdays**

Although bottle collection from our premises is done routinely Mid Morning once a week I see no reason why this should or can be applied to an extension application. Please advise?

APPLICATION: 2020/90302 (Opening Times)

At committee this was rejected in its entirety back to the previous decision of **2017/62/91888/W** which was varied in Application Number: **2018/70/90876/W** stating:

15. The hereby approved development shall operate in accordance with the following “hours of use:”

- · Northern Building: 0930 to 2230 any day of the week
- · Southern Building: 0900 to 2000 any day of the week
-
- · Deliveries or dispatches to or from the site: 0730 to 2000 Monday to Friday, 0800 to 1800 Saturdays
- · No deliveries Sundays and Bank Holidays

As I mentioned in our conversations the term “hours of use” has been used in the issued condition, despite “Opening Times” being used in all our applications (as listed on KMC Planning application literature) and listed as “Opening Times” in the intro to the decision.

“Application Number: 2018/70/90876/W – Variation”

“In pursuance of its powers under the above-mentioned Act and Order the KIRKLEES COUNCIL (hereinafter called “The Council”) as Local Planning Authority hereby permits: -

*VARIATION CONDITIONS 2 (PLANS) AND **15 (OPENING TIMES)** ON PREVIOUS PERMISSION 2017/91888 FOR CHANGE OF USE, ALTERATIONS AND EXTENSIONS TO FORMER MILL BUILDINGS TO FORM MIXED USE DEVELOPMENT COMPRISING OF FOOD MANUFACTURING, COOKERY SCHOOL, CAFE, SHOP, RESTAURANT, COOKING DEMONSTRATIONS/TASTING AREAS AND MANAGEMENT OFFICE/SUITE. OUTDOOR SEATING AREAS, SERVICE YARD, PARKING AND ASSOCIATED LANDSCAPING WORKS.”*

I think there lies some disparity with planning guidelines and what “we” have understood to be planning guidelines and also the public expectation applied in our applications, and subsequent opening times at Devour. It seems to be quite subjective in its interpretation. I think this is a fair and reasonable assumption and something that we will need to readdress either via an appeal process or with a new application.

The term “Opening Times” as a definition, I can only find in relation to the Licensing Act 2003 which of course, covers our business. (Unless you can point me to the definition for planning?) But let’s be frank here, if you asked any member of the public, they would probably give you this definition.

Licensing Act 2003

“opening times/hours” is defined in section 172(5) as meaning the times during which the premises may be used for licensable activities.”

There is a reasonable assumption that if I buy a beer at 10.29, although technically licensed establishments such as Devour are “technically” closed at 10:30, there is an expectation that patrons will finish what they have purchased on the premises and leave in due course, which of course as we know in most pubs and restaurants can take 30/45mins. This is a reasonable expectation, and I’m guessing is an assumption that is used up and down the country? Obviously, if at worst case we should be prosecuted via Enforcement proceeding we would reasonably want to see how this legislation has been applied to other business in the area and that that too is being enforced?

Perhaps you can advise where other establishments in the area have such conditions applied?

Planning Condition Definition “HOURS OF USE” – attached is a document entitled:

Circular 11/95: Use of conditions in planning permission – which I presume is official national guidance used local authorities when imposing conditions?

Article 66 clearly defines the use of the term “Hours of Use” literally in relation to Restaurants:

“Hours of use (restaurants etc)

66. The use hereby permitted shall not be open to customers outside the following times.”

“Hours of use” clearly relates to customers and NOT anyone else Staff/ Owners/Cleaners or any specific task etc just “CUSTOMERS”.

Therefore, in accordance with that definition why has it been deemed necessary to bring into the conversation the “extra hour” in both our conversation with Enforcement in February and throughout the planning process in relation to the variation of Condition 15? RE: Your letter to residents of Royds Mill? And discussions in and surround our application to vary via the committee meeting?

I think this had a damaging effect on our application (via Strategic Committee) and somewhat clouded the issue for everyone involved. I need and require clear guidance backed by official literature that contravenes this assumption?

Furthermore, this casts doubt on the legitimacy of the proposed Condition 6 you are looking to apply to the “Extension” decision?

Condition 15 clearly relates to customers and by definition we are quite entitled to prepare food, stock control, cleaning & maintenance outside these hours? This condition does NOT cover these activities. We would of course, should these conditions be implemented upon this application, look to challenge.

The enclosed document gives very interesting guidelines into how conditions should be implemented and how they should be perceived to be “Reasonable”, “Not Unduly Restrictive” and how they are perceived valid via the Courts or Secretary of State.

CONDITION REASONING:

Although I have no problem with the reasoning behind Condition 15, it clearly states the criteria on which Condition 15 was imposed, which going forward, from my point of view is important to understand and how by applying to vary, these are the restrictions and criteria we should look to address.

Reason: So as not to detract from the amenities of nearby residents and to accord with Policies EP4 and EP6 of the Kirklees Unitary Development Plan and Policy PLP52 of the Kirklees Publication Draft Local Plan and Policies in Chapter 11 of the National Planning Policy Framework.

“Not to detract from the amenities of nearby residents” – quite vague if I’m honest, and not necessarily specific.

Chapter 11 National Planning Policy Framework – Making effective use of land – Not sure how this relates to Condition 15?

EP4 & EP5 – seem to be in relation to Noise Generation and protection to neighbourhoods of noise generating sources.

Policy PLP 52 Protection and improvement of environmental quality

Proposals which have the potential to increase pollution from noise, vibration, light, dust, odour, shadow flicker, chemicals and other forms of pollution or to increase pollution to soil or where environmentally sensitive development would be subject to significant levels of pollution, must be accompanied by evidence

*to show that the impacts have been evaluated and measures have been incorporated to prevent or reduce the pollution, so as to ensure it does not reduce the quality of life and well-being of people to an unacceptable level or have unacceptable impacts on the environment.
Such developments which cannot incorporate suitable and sustainable mitigation measures which reduce pollution levels to an acceptable level to protect the quality of life and well-being of people or protect the environment will not be permitted.*

Obviously, I can see the rationale behind these “reasons” – However, it’s clear through evidence we have provided via sound reports and a multitude of supporting letters from local residents that support our application and sound/noise generation is NOT an issue. Which is probably why, as a planning authority you recommended to the committee that the variation, we were looking to vary should be approved! However, as stated, we provided detailed reports in regard to sound and testimony from local residents both in initial planning and subsequently in replies your letter to residents of Royds Mill - I feel we have demonstrated we do not impact on local amenities and therefore I feel we would have grounds to appeal this decision.

:

As I have previously stated, I do feel involvement in our applications has been somewhat strategic and found his statement and the meeting to be at the very least misleading. Obviously, we are looking into to this and his involvement with the strategic complaint made to Environmental Health about “**Noise Nuisance**” which although was dismissed by the EA, clearly had an enormous impact of the decision made by the committee and triggered the various “reasoning” policies applied in condition 15.

CONCLUSION:

So to conclude, obviously I am not a planning professional so please do correct me if have got the wrong end of the stick on any of this, and if I have misinterpreted any of the information I have gathered then of course I will amend our strategy going forward, but as it stands :

I feel we have various grounds for appealing the decision in relation to our application to vary condition 15 – and it is our intention to do so.

I do not agree to the proposed Conditions 6 & 7 on Application 2019/94096 – I do not see why they are legitimate or applicable and are if fact additional conditions which are directly detrimental to the running of our business.

If there is an opportunity to vary Condition 15 with the same wording re: “Hours of Use” to 23:30 - I think this would be beneficial, however as that seems unlikely – see no benefit or legitimacy in delaying any of the written decisions pending on all our applications including to discharging of conditions which I conclude as now well overdue, should be issued and settled forthwith.

I would be willing to enter into discussion with yourselves and Committee members to find an acceptable compromise to the issues we are facing as a business, which are legitimate and very serious, going forward – I’m happy to prepare and implement a new planning proposal and application to vary condition 15 but with clear wording and guidelines.

Therefore, I would welcome a discussion with head of the committee and yourselves to find a solution and compromise.

Going forward, can all correspondence be issued directly to myself and not to our agent . His services will be used on more specific areas and via consultation.

I look forward to your prompt response.

Many thanks

On 21/08/2020, 11:10,

wrote:

Dear

Further to your e-mail of 6 August 2020 I have now had the opportunity to consider the points raised and review the official minutes from the committee meeting of 15th July which have now been published and agreed by members on 5th August 2020.

I can confirm that the agreed minutes do not refer to the other hours of use conditions suggested in the committee report and simply state that they should accord with the existing hours of use conditions. The set of recommended conditions has therefore been amended to reflect this, I will forward you and Nick Willock a copy once the wording has been finalised.

With regards to your interpretation of the wording of the hours of use/opening times condition. Current guidance is set out in Planning Practice Guidance (PPG) as circular 11/95 has been withdrawn other than appendix A which includes model conditions. The relevant part of the PPG can be seen at the link below: <https://www.gov.uk/guidance/use-of-planning-conditions>

I would start by specifically looking at the wording of the approved condition 15 from 2018/90876 which is set out below. Whilst you have made reference to the licensing act, I do not consider this is particularly relevant as that is specifically dealing with matters related to licensable activities, and planning applications consider wider amenity considerations.

From a planning perspective the first thing to consider is what the approved 'use' at the site is, also referred to as the 'approved development' in the condition. For this application it is a "mixed use development comprising of food manufacturing, cookery school, cafe, shop, restaurant, cooking demonstrations/tasting areas and management office/suite".

15. The hereby approved development shall operate in accordance with the following hours of use:

- Northern Building: 0930 to 2230 any day of the week
- Southern Building: 0900 to 2000 any day of the week
- Deliveries or dispatches to or from the site: 0730 to 2000 Monday to Friday, 0800 to 1800 Saturdays
- No deliveries Sundays and Bank Holidays

The condition specifically sets out that the 'use' or 'approved development' e.g., mixed use development comprising of food manufacturing, cookery school, cafe, shop, restaurant, cooking demonstrations/tasting areas and management office/suite, shall operate

in accordance with the specified hours. I would therefore suggest that activities which specifically relate to any set out the description should not occur outside of those stated hours and that the condition is clear in this regard. Therefore, there should be no customers on site after the stated hours and the additional flexibility until 23.30 which you have sought in your e-mail is therefore not possible under this application as committee members were clear that the site should operate in accordance with the previously approved hours. You would need to make a new application for this or appeal the condition.

There is often some flexibility in terms of associated operations at a site such a food preparation cleaning etc to occur outside of these hours and as I understand thing this occurs now.

With regard the need for the hours condition on the application for the extension, I do consider this is appropriate as the extension includes a separate function space and having an hours condition makes the hours of operation clear.

In terms of the suggested conditions for the 'extra hour' the reasons behind this is set out in paragraph 10.25 of the committee report which I have included below:

10.25 However, it is noted that other activities associated with the wider operation of the premises such as cashing up, cleaning, good preparation and general maintenance would take place outside the hours of operation for customers, and this issues has been raised by objections received. These other actives are considered to have a minimal impact on residential amenity as they would mainly relate to activities within the building which are mitigated by fabric of the building itself. However to provide clarity and a level of additional protection for adjacent properties it is considered appropriate to condition the hours of operation for these other activities to no occur before 7 am and not be any later than an hour past the extended hours for customers. Furthermore, a restriction will be placed on deliveries to not occur before 7.30 and not after 8pm Monday to Friday and 8am to 6pm on Saturdays with no deliveries on Sundays or bank holidays. A restriction on the disposal of bottle will also be added to not occur before 9am or after 9pm.

With regard to your other points, the referred to Chapter 11 of the NPPF relates to a former version of the NPPF from 2012 where Chapter 11 which related to Conserving and enhancing the natural environment, see the link below for the document:

<https://webarchive.nationalarchives.gov.uk/20180608213715/https://www.gov.uk/guidance/national-planning-policy-framework>

In term 'residential amenity' this is a typical phased used as part of planning applications to assess the impact of a development on all matters which may affect surrounding residential properties such as overbearing, overlooking, overshadowing impact and noise or odour disturbances.

You do have the right to appeal conditions attached to the decision notice and I would advise that you seek professional advice on this matter. If you wished to reapply then I would suggest that further information would need to be submitted to address the matters raised at the planning committee meeting.

I hope the above information address the points which you have raised.

Kind Regards

Development Management
Economy and Infrastructure – Planning and Development
Kirklees Council

Hi

Having had some time to consider your response, I'm afraid I'm non the clearer about your intentions concerning the proposed conditions to the Extension Application?

You start by validating my concerns by saying the "set of recommended conditions has therefore been amended" then proceed to try and explain via 10:25 the validity of trying to impose conditions which are restrictive and unnecessary to the application in question. And clearly intend to be used to "supersede" and be in addition to the original existing conditions set out in 2018. Please can you forward these amendments today please? Surely having my agreement is the preferred way forward? (as requested previously please

do not send anything to our agent
going forward.)

at this time - I will be continuing to manage these issues

Additionally, I am very sceptical to the extent of pressure and involvement of which seems to be prevalent on ALL our applications. I get the feeling he is leading these issues and not officers?

Why continual delays in issuing these planning decision notices? Clearly a number of weeks if not months have passed and we are yet to receive any notices or any information on discharging of conditions, which have been ongoing since April 2020? What is the problem here? Why the delays and why despite my requests for specific timetables is there apparent reluctance to issue and complete?

"55. Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision making."

Just for clarity, it is our intension to appeal any conditions applied to these decision notices which we feel are unnecessary, not relevant to the proposed planning application in question and unreasonable & restrictive to our ongoing business. This has the smell of ulterior motives rather than providing clarity, very similar to conditions which were imposed on Holmfirth Vineyard, another business which seems to have the attention of

The Garden Pergola and Extension were approved, the latter a variation to an existing approved application, with no ulterior conditions applied.

Condition 15 was declined - which is fine - so please issue the notices, with specific reasons which relate to the actual committee refusal, which despite your efforts to warn that they had no foundation in evidence and in fact now opens the door for grounds for appeal. Call me sceptical, but reading between the lines I'm guessing the members are trying to get the wording just right to get what has requested?

Something else came up yesterday, regarding involvement. I have recently received minutes from meeting with an "objector" and as part of my FOI request, held on 14th February this year, just after our applications were made. Within this document there is a reference made to absence, which I thought unusual and subsequently I have been made aware he was part of the original email requesting the meeting.

Would it be a reasonable assumption that has or had been party to discussions with and the about our site and subsequent applications? As I understand, shouldn't committee members at the very least disclose such a contact and/or relieve themselves from sitting on the committee that would be voting and commenting on an application that they may have a personal interest? This does seem another area which all looks very "murky" from our point of view.

Who would I need to contact to get official clarification of procedure? And if a breach of protocol was made, who would be the relevant contact who would deal with planning complaints?

Finally, just on Hours of Operation debate. I have looked through the attached PPG document and I see no definition or information that would alter my interpretation of Condition 15 in relation to Devour. Although you have referenced our "mixed use" development clearly the Northern Building houses the Restaurant part of Devour - this is a reasonable assumption - obviously we could email back and forth about miniscule interpretations, but I think we both understand it relates to customers and would be very difficult, without clear definitive guidelines (which you haven't provided) to argue against that from a legal standpoint. Let hope it never has to come to that.

Please gentlemen, with respect can we push these issues forward to the point of completion this week? These delays are obviously concerning, damaging our businesses future plans which of course, during such

a difficult time for all hospitality business due to CoVid restrictions, is continuing to draw my attention away from more pressing issues.

Many Thanks

Clearly some of the responses from _____ regard to “Hours of Use” contradict the answer that was given to the very same question raised by _____ back in June 2020 – the response being:

“The approved hours relate to the use of the site as a restaurant, so they relate to customers coming and going.”

Should this appeal be successful, I respectfully ask that no further conditions be applied to the permission, other than to vary the **“Hours of Use”** times set out in Condition 15 and our application. It’s imperative that we are allowed the freedom to trade, manage and maintain our business in a non-restrictive and reasonable manner. This assumption that any, local residents other than _____, have any sort of problem with the site are without foundation, and as I have stated on numerous occasions, this seems to relate to a personal and strategic campaign by _____ against our business.

In Conclusion:

As a local family and local business, we have looked to work and consult with planners, the community, councillors and local residents throughout the whole development process. Woodland Mills was a difficult site for access, during the initial development and we were by no means “experienced developers” and some inevitable problems arose, as one committee member rightly said; ***“plans are not necessarily a perfect science”***.

Once that initial stage of development was complete, and Devour was up and running as a Restaurant, (From December 2018) we enjoyed just over a year of successful trading up to the point of this and the other subsequent planning applications made in Dec 2019/Jan 2020. Our application to vary the hours of use was far from being a retrospective application to appease Enforcement or Planning, but came about from a detailed understanding our business model, the demands and necessities our customer base and an overall strategic business plan to enable the successful growth and survival of our business and its employees.

It’s now November 2020, over a year since we first made an application to vary the Hours of Use. We are currently navigating through Lockdown #2. The hospitality sector has been hit hard since March and our current short term future is uncertain. Now more than ever, a successful appeal to this refusal decision has taken on a hugely more significant role in the long term recovery of a business with up to 30 permanent members of staff. It’s essential!

Initially we were disappointed that our application would be delayed until July 2020, with _____ request that all our applications be heard at Strategic Committee, but now having uncovered the various email threads, conversations and discussion held behind closed doors concerning our business and ours applications, we feel we have been let down and treated unfairly by the whole planning process. We have endured significant financial losses in respect to both turnover and gross profit, over the period since the members decision, and we have calculated, taking into account the recent government 10pm curfew restrictions for part of that period, and our losses from that period to present date. Therefore, we have attached an application for losses/costs. Furthermore we ask, should our appeal application be successful, and costs/losses are awarded, they be compounded to include the further expected losses we would naturally incur from any lifting of curfew restrictions, made before the date this appeal is complete.

We have over the course of the last 3 to 4 years transformed this site, investing hundreds of thousands of pounds into our business and wider local economy, improving and enhancing the local area immeasurably.

Apologies for the length of this document, but clearly this is a very complex and often divisive case which hopefully can be concluded quickly in a balanced and reasonable manner.

Thank you.

Devour/D&L Developments