

**Consultation Response from KC Environmental Health – Pollution & Noise Control
2020/90450 Land at, Owl Lane, John Ormsby V C Way, Dewsbury, WF12 7RQ**

Erection of restaurant with drive-thru, car parking, landscaping, play frame, customer order displays and associated works.

**Date Responded:
23rd March 2020**

**Responding Officer:
Hannah Kent**

**Responding Ref:
WK/202005000**

I have reviewed this application and supporting documents and comment as follows:

The proposed restaurant is located within very close proximity to a number of residential dwellings with gardens. I therefore have concerns that the operation of the restaurant and drive-through may result in significant loss-of amenity for the occupants of nearby dwellings, particularly from noise and odour. Whilst it is possible to mitigate for noise and odour, it is not possible to eliminate, and the degree to which these are detrimental to the amenity of the area must be considered. Commercial cooking odour in particular will be introduced into the area where it is not currently experienced.

EVCP intro paragraph

In an application of this nature it is expected that facilities for charging electric vehicles and other ultra-low emission vehicles are provided in accordance with the National Planning Policy Framework and *Air Quality & Emissions Technical Planning Guidance* from the West Yorkshire Low Emissions Strategy Group. A condition requiring charging points is therefore necessary.

EVC1 Electric Vehicle Charging Points - Condition

Before the electrical system is installed a scheme detailing the dedicated facilities that will be provided for charging electric vehicles and other ultra-low emission vehicles shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall meet at least the following minimum standard for numbers and power output:-

- One Standard Electric Vehicle Charging Point for every 10 unallocated commercial parking spaces

Buildings and parking spaces that are to be provided with charging points shall not be brought into use until the charging points are installed and operational. Charging points installed shall be retained thereafter.

Reason: In the interest of supporting and encouraging low emission vehicles, in the interest of air quality enhancement, to comply with the aims and objectives of Policies LP24 and LP51 of the Kirklees Local Plan and Chapters 2, 9 and 15 of the National Planning Policy Framework.

EVF1 Electric Vehicle Charging Points – Footnote

- A Standard electric vehicle charging point is one which is capable of providing a continuous supply of at least 16A (3.5kW). A 32A (7kW) is however more likely to be futureproof
- At non-residential developments, the requirement for one electric vehicle charging point for every 10 parking spaces may initially be reduced to one charging point for every 20 parking spaces with the remainder provided at an agreed trigger point.
- For developments where some or all of the parking is likely to be used for shorter stay parking (30mins to 4 hours) then Fast (7-23kW) or Rapid (43kW+) charging points may be more appropriate. If Fast or Rapid charging points are proposed together with restrictions on the times that vehicles are allowed to be parked at these points then a lower number of charging points may be acceptable.
- The electrical supply of the final installation should allow the charging equipment to operate at full rated capacity.

- The installation must comply with all applicable electrical requirements in force at the time of installation.

A transport assessment has been submitted in support of this application, stating that 1 vehicle charging point will be provided. However, it is noted that parking for 38 vehicles is proposed, and as such, a minimum of 4 electric vehicle charging points are required. Furthermore, in view of the anticipated short-duration stays associated with fast-food restaurants, Rapid charging points are considered most appropriate.

R4 Contaminated land Intro paragraph

This site has been identified on our mapping system as potentially contaminated land due to its previous uses relating to mining, colliery tipping and refuse/slag heap. Contaminated land conditions are therefore necessary.

A ground investigation has been submitted in support of this application, however, there appear to be some differences noted between the history of the site, and Kirklees Council records which will require further investigation. Furthermore, previous contaminated land assessments are referred to in a previous application reference 2016/60/92953/E. A phase II report was provided was submitted in support of the application that made reference to an earlier phase I report, dated 15.09.06 – however, as this report was not provided, the phase II report could not be assessed, and therefore full contaminated land conditions required at this stage, and remain outstanding.

CLC1 Submission of a Phase 1 Preliminary Risk Assessment Report - Condition

Groundworks shall not commence until actual or potential land contamination at the site has been investigated and a Preliminary Risk Assessment (Phase I Desk Study Report) has been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure the safe occupation of the site in accordance with Policy LP53 of the Kirklees Local Plan and paragraph nos. 178 and 179 of the National Planning Policy Framework

CLC2 Submission of a Phase 2 Intrusive Site Investigation Report - Condition

Where further intrusive investigation is recommended in the Preliminary Risk Assessment approved pursuant to condition (CLC1), groundworks (other than those required for a site investigation report) shall not commence until a Phase II Intrusive Site Investigation Report has been submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure the safe occupation of the site in accordance with Policy LP53 of the Kirklees Local Plan and paragraph nos. 178 and 179 of the National Planning Policy Framework.

CLC3 Submission of Remediation Strategy - Condition

Where site remediation is recommended in the Phase II Intrusive Site Investigation Report approved pursuant to condition (CLC2) further, groundworks shall not commence until a Remediation Strategy has been submitted to and approved in writing by the Local Planning Authority. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures.

Reason: To ensure the safe occupation of the site in accordance with Policy LP53 of the Kirklees Local Plan and paragraph nos. 178 and 179 of the National Planning Policy Framework

CLC4 Implementation of the Remediation Strategy - Condition

Remediation of the site shall be carried out and completed in accordance with the Remediation Strategy approved pursuant to condition (CLC3). In the event that remediation is unable to proceed in accordance with the approved Remediation Strategy or

contamination not previously considered [in either the Preliminary Risk Assessment or the Phase II Intrusive Site Investigation Report] is identified or encountered on site, all groundworks in the affected area (except for site investigation works) shall cease immediately and the Local Planning Authority shall be notified in writing within 2 working days. Works shall not recommence until proposed revisions to the Remediation Strategy have been submitted to and approved in writing by the Local Planning Authority. Remediation of the site shall thereafter be carried out in accordance with the approved revised Remediation Strategy.

Reason: To ensure the safe occupation of the site in accordance with Policy LP53 of the Kirklees Local Plan and paragraph nos. 178 and 179 of the National Planning Policy Framework

CLC5 Submission of Validation Report - Condition

Following completion of any measures identified in the approved Remediation Strategy or any approved revised Remediation Strategy a Validation Report shall be submitted to the Local Planning Authority. No part of the site shall be brought into use until such time as the remediation measures have been completed for the site in accordance with the approved Remediation Strategy or the approved revised Remediation Strategy and a Validation Report in respect of those remediation measures has been approved in writing by the Local Planning Authority. Where validation has been submitted and approved in stages for different areas of the whole site, a Final Validation Summary Report shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure the safe occupation of the site in accordance with Policy LP53 of the Kirklees Local Plan and paragraph nos. 178 and 179 of the National Planning Policy Framework

CLC 7 Contaminated land - Footnote

All contamination reports shall be prepared in accordance with *Model Procedures for the Management of Land Contamination – Contaminated Land report 11* (CLR11), National Planning Policy Framework (NPPF) and the Council's Advice for Development documents or any subsequent revisions of those documents.

ODOUR CONTROL

Odour control information has been submitted in support of this application, however, details specific to this site have not been provided. The information provided is a standard document related to a McDonalds test facility which make reference to "Hi-Catch grease filters". I am not satisfied that this information demonstrates how odours will be controlled to prevent odour complaints from neighbouring properties which are as close as 20 metres away.

Odours Impact Assessment Report Before Determining the Application

Before determining the application, an Odour Impact Assessment Report shall be submitted in writing to the Local Planning Authority. The assessment report will:

- be site-specific, determining the potential of adverse impact on nearby residential neighbours from cooking odours associated with the proposed restaurant/drive-through;
- determine the potential of adverse impact from the refuse store (as it borders residential receptors);
- the appropriate method of odour control for this particular site, taking into account local topography, height of discharge in relation to the height of neighbouring residential receptors;
- detail ductwork to final termination, incorporating secondary filtration/odour control techniques, and;
- demonstrate how the location of discharge, velocity of dispersal and dilution of the residual odours will be achieved so as not to cause a loss of amenity.

If odour levels predicted in the report are unacceptable, it may be necessary to refuse the application. However, if the assessment demonstrates that odour can be controlled so as not to cause loss of amenity, the following condition shall be applied:

OC1 Kitchen Extract Scheme - Condition

The use hereby permitted shall not begin until the installation and/or erection of any kitchen extract ventilation system, incorporating the recommended odour impact assessment mitigation details for the treatment of emissions to remove odours and control noise emissions have been submitted to and approved in writing by the Local Planning Authority and the works specified in the approved scheme have been installed. Such works shall thereafter be retained and operated at all times when the restaurant is in use and maintained in accordance with the manufacturer's instructions.

Reason: To ensure the proposed development does not cause harmful odour pollution (within either a public area or neighbouring premises) in the interest of amenity, to comply with the aims and objectives of Policies LP24 and LP52 of the Kirklees Local Plan and Chapters 12 and 15 of the National Planning Policy Framework.

DR08 Pollution Prevention (for food outlets including take-aways/restaurants)

Development shall not commence until a scheme to prevent fats, oils, and grease entering the drainage network serving commercial food preparation and dish-washing areas has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented prior to first operation of the development and shall be retained throughout the lifetime of the development.

Reason: To ensure the provision of adequate and sustainable systems of drainage are employed, in the interests of amenity, environmental well-being and to accord with Policy BE1(iv) and the NPPF.

NOISE CONTROL

A Noise Impact Assessment by Acoustic Associates South West Ltd dated 7th February 2020 was submitted in support of this application. The report details measurements of noise levels at the eastern boundary of the application site bordering the NE boundary of 18A Owl Lane. The report assesses noise from vehicles using the drive-through, customer vehicle noise, and noise from fixed mechanical plant.

FIXED PLANT NOISE IMPACT ASSESSMENT

1. *Noise from fixed mechanical plant was assessed and found to be acceptable with appropriate mitigation, with the exception of the following plant:*
 - a. *Danfoss Freezer Condenser OP-LPHM096 is too noisy for the site and requires an alternative freezer condenser with a sound power level no more than 61 dB L_{WA}.*
 - b. *ABS drinks cooler condenser is too noisy for the site and cannot be and must be omitted for this site as recommended in the acoustic report.*
2. *Noise control measures for all fixed mechanical plant must be fitted in order to mitigate noise from fixed plant as follows:*
 - a. *Fixed plant must be located to the rear of a roof mansard (located between the restaurant and the residential receptors. All louvres shall have a solid imperforate backing.*
 - b. *Such works shall thereafter be retained and operated at all times when the restaurant is in use and maintained in accordance with the manufacturer's instructions*

CUSTOMER VEHICLE / DRIVE THRU NOISE IMPACT ASSESSMENT

3. *There is no accepted methodology for undertaking noise impact assessments for car park noise, customer vehicle noise, resulting in a variety of highly differing methods being used. The noise levels generated by the customer vehicle movements at the proposed development have been predicted in this instance, have been calculated*

by way of “the overall sound level created by a single vehicle, which will take approximately 2 minutes to arrive, order, collect and leave the drive thru lane, before being multiplied up for the number of vehicles predicted to pass through the drive thru lane in each hour, added to the number of vehicles using the car park”. This has been used to predict an hourly $L_{Aeq,1hr}$. It appears that the customer vehicle (Activity) noise impact has been predicted by using the above Activity $L_{Aeq,1hr}$, and calculating the increase to the ambient noise climate.

- a. This method is not acceptable for the purposes of determining the noise impact of customer vehicles (due to the averaging time) – a more appropriate method would be to use the $L_{Aeq, T (activity)}$ for comparison, as this will provide a more accurate assessment of the actual noise impact at the nearby receptors. The use of $L_{Aeq,1hr}$ hides the actual noise levels experienced.

CAR DOOR SLAM NOISE IMPACT ASSESSMENT

4. The use of bay 0, the closest parking bay to the nearby receptors may not provide for a worst case scenario assessment of the noise impact of car door slams due to the close proximity of the source to the acoustic fence - it may provide a shadowing effect. The image on P.23 of the assessment shows the barrier in 3D in relation to the receptor, but it also indicates that it will provide a good barrier to noise sources in bay 0. It is not clear if this represents worst case scenario, and additional data for the other parking bays should be provided.

DELIVERY NOISE IMPACT ASSESSMENT

5. I accept the findings of the BS4142 assessment, that noise from deliveries will not be significant. However, the noise assessment appears to only consider the noise of the delivery vehicle engine and chiller units. Deliveries can cause significant disturbance from noise associated with manoeuvring vehicles (reversing alarms, tailgate lifts) and from cages rattling and banging. A condition limiting hours for deliveries is therefore appropriate.

CONSTRUCTION NOISE ASSESSMENT

6. No construction noise assessment has been undertaken

NC - Noise from Fixed Plant & Equipment - Condition

The combined noise from any fixed mechanical services and external plant and equipment shall be effectively controlled so that the combined rating level of noise from all such equipment does not exceed the background sound level at any time. “Rating level” and “background sound level” are as defined in BS 4142:2014+A1:2019.

Reason: To ensure the proposed development does not cause harmful noise pollution within neighbouring noise sensitive locations, in the interest of amenity, to comply with the aims and objectives of Policies LP24 and LP52 of the Kirklees Local Plan and Chapters 12 and 15 of the National Planning Policy Framework.

CEMPC Construction Environmental Management Plan - Condition

Prior to any development commencing, a Construction Environmental Management Plan (CEMP) shall be submitted to and agreed in writing with the Local Planning Authority. The plan shall describe in detail the actions that will be taken to minimise adverse impacts on occupiers of nearby properties by effectively controlling:-

- Noise & vibration arising from all construction related activities to. This should also include suitable restrictions on the hours of working on the site including times of deliveries.
- Dust arising from all construction related activities.
- Artificial lighting used in connection with all construction related activities and security of the construction site.

The agreed plan shall be adhered to throughout the construction of the development.

Reason: To safeguard the amenities of the occupiers of nearby properties in accordance with part 15 of the NPPF and Kirklees Local Plan.

CEMPF Construction Environmental Management Plan - Footnote

Noisy construction related activities should not take place outside the hours of:

07.30 to 18.30 hours Mondays to Fridays

08.00 to 13.00hours , Saturdays

With no noisy activities on Sundays or Public Holidays

Institute of Air Quality Management document “*Guidance on the assessment of dust from demolition and construction*” Version 1.1 2016 provided detailed information regarding dust control.

Kirklees Council has powers under Section 60 of the Control of Pollution Act 1974 to control noise from construction sites and may serve a notice imposing requirements on the way in which construction works are to be carried out. It has additional powers under Sections 80 of the Environmental Protection Act 1990 to prevent statutory nuisance including noise, dust, smoke and artificial light and must serve an abatement notice when it is satisfied that a statutory nuisance exists, or is likely to occur or recur. Failure to comply with a notices served using the above mentioned legislation would be an offence for which the maximum fine on summary conviction is unlimited.

HUC1 Hours of Use Open for Customers - Condition

The use hereby permitted shall not be open to customers outside the hours of 09:00 to 22:00 Monday to Saturday and 10:00 to 16:00 Sundays

Reason: To ensure that the proposed use(s) does not give rise to the loss of amenity to nearby residential properties, by reason of noise or disturbance at unsociable hours, to accord with the aims of Policies LP24 and LP52 of the Kirklees Local Plan and Chapters 12 and 15 of the National Planning Policy Framework.

HUC3 Hours of Use for Deliveries – Condition

There shall be no deliveries to or dispatches from the premises outside the hours of 09:00 and 22:00 Monday to Saturdays. No deliveries shall take place on Sundays or Bank Holidays.

Reason: To ensure that the proposed use(s) does not give rise to the loss of amenity to nearby residential properties, by reason of noise or disturbance at unsociable hours, to accord with the aims of Policies LP24 and LP52 of the Kirklees Local Plan and Chapters 12 and 15 of the National Planning Policy Framework.

LC1 External Artificial Lighting - Condition

Before the installation of external artificial lighting commences a lighting scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme should include the following information:-

- a) The proposed hours of operation of the lighting
- b) The location and specification of all of the luminaires
- c) The proposed design level of maintained average horizontal illuminance for the areas that needs to be illuminated.
- d) The predicted vertical illuminance that will be caused by the proposed lighting when measured at windows of any properties in the vicinity.
- e) The measures that will be taken to minimise or eliminate glare and stray light arising from the use of the lighting that is caused beyond the boundary of the site

- f) The methods of switching and controlling the lighting so that it is only operated at the permitted times and at times when it is required.

The external artificial lighting shall be installed and operated thereafter in accordance with the approved scheme.

Reason: To safeguard the amenities of the occupiers of nearby properties and promote sustainable development in accordance with part 2 and 15 of the NPPF and of the Kirklees Local Plan

LF1 Artificial lighting - Footnote

The proposed design levels of illuminance should be shown to be appropriate for the intended use by reference to appropriate guidance. Generally, to minimise problems of glare and stray light from external artificial lighting it should be installed and maintained in accordance with *the "Guidance Notes for the Reduction of Obtrusive Light"* by the Institution of Lighting Professionals: 2011 www.theilp.org.uk. The predicted levels of stray light must not exceed the recommended maximum levels given in Table 2 of this guidance for an Environmental Zone, E3 Suburban.

LC2 Lighting Hours of Use – Condition

The artificial lighting hereby approved shall not be operated between dawn and dusk on any day of the week

Reason: To safeguard the amenities of the occupiers of nearby properties and promote sustainable development in accordance with part 2 and 15 of the NPPF and of the Kirklees Local Plan

FS1 Food Safety- Footnote

It is recommended that prior to development commencing the applicant should contact the Food Safety Team of Environmental Services to arrange an advice visit to discuss food safety and hygiene requirements including an appropriate layout. The Food Safety team can be contacted on 01484 226452.

With Regards

Hannah Kent