



Memo

From Thomas Crabb, Environmental Noise Solutions Limited
To Mr. John Cummins, My Town Planning Consultancy
Subject Variation of opening hours at Devour at the Dyehouse
Date 10 June 2022

Environmental Noise Solutions Limited (ENS) has been commissioned by My Town Planning Consultancy to produce a technical summary in relation to the noise impact of the proposed variation of opening hours at Devour at the Dyehouse, Luke Lane, Thongsbridge, Holmfirth, HD9 7TB (hereafter referred to as 'the site').

Planning permission (ref: 2018/70/90876/W) for a variation of opening hours was granted by Kirklees Council (KC) in July 2018, subject to conditions. Condition 15 relates to opening hours as follows:

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

Planning permission (ref: 2020/70/90302/W) was then sought for a variation of Condition 2 (plans) and Condition 15 (opening hours) on previous permission 2018/70/90876/W.

In relation to opening hours, the proposals were to extend the opening hours of the northern building only to:

- 0900 to 2330 Sundays to Thursdays
- 0900 to 0000 Fridays and Saturdays
- 0900 to 0130 Christmas Eve and New Year's Eve

The application was accompanied by a restaurant noise management plan (RNMP) produced by Robert Halstead Chartered Surveyors & Town Planners, which is appended to this summary. The RNMP includes restrictions on bottle/waste disposal times, and details to ensure that taxi pick-ups will only take place at a designated taxi bay waiting area at the rear of the site.

As detailed in the delegated report / committee report, Environmental Health at KC had no objections to the extended opening hours, providing the RNMP was adhered to, and recommended replacing the existing Condition 15 with 4 separate conditions relating to hours of use, deliveries, other activities and bottle disposal.

Whilst the planning application was approved at the 15th July 2020 KC Strategic Planning Committee, the opening hours were not varied, with Condition 7 of Planning Permission ref: 2020/70/90302/W mirroring Condition 15 of the previous permission.

The reasons for refusing to vary the operating hours are not detailed in the minutes of the committee meeting, however, it was evident that committee members had concerns about the effects of the extended hours on residential amenity.

Reference was made during the meeting to existing complaints and problems with noise nuisance associated with the site. However, a member of the Pollution and Noise Control Team at KC clarified that only 1 complaint had been received during the first 18 months of the premises being open, and that this complaint related only to the premises operating outside of its permitted hours, and not specifically to noise. The complainant declined to have noise monitoring equipment installed, and the complaint was not substantiated by KC.

In relation to the specifics of the planning application, Pollution and Noise Control Team at KC were satisfied that any noise concerns could be allayed with the adoption of the RNMP.

The decision not to vary the opening hours was appealed in November 2020 (PINS reference: APP/Z4718/W/20/3263244). To specifically address the concerns raised at the committee meeting, the appeal was accompanied by an assessment of customer vehicle movements produced by ENS (report ref: NIA/9041/20/9342/v1/Devour, Traffic), which is appended to this summary.

The report determined that there was no change in ambient noise levels with or without sporadic customer vehicle movements leaving the site up until 0000 hours. In layman's terms, the noise associated with vehicles leaving the site does not contribute to existing traffic noise from unrelated vehicles on Luke Lane.

With respect to the Planning Practice Guidance on Noise (which accompanies the National Planning Policy Framework), noise associated with customer vehicle movements at the restaurant can only represent a No Observed Adverse Effect Level (NOAEL) as:

- It can be heard, but does not cause any change in behaviour or attitude
- It does not affect the acoustic character of the area

Despite this, the appeal was dismissed. No technical evidence for the refusal was presented, but the Planning Inspector commented that:

'Thus, the (likely) effects of pedestrian movements, those occasions when customers may wait at the entrance for taxis, and the full range of vehicle movements and the effect that those related to the appeal site's operation would have, when compared with representative ambient levels are patchy in the submissions thus far.'

Proposals are now to submit a revised planning application to KC to vary Condition 7 of Planning Permission ref: 2020/70/90302/W as follows:

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

- Northern Building: 0900 to 2330 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

This represents a reduction in operating hours over those previously sought.

For the avoidance of doubt, current proposals are **not** to vary the operating hours of the greenhouse, pergola and outside seating area, which are restricted by Condition 4 of Planning Permission ref: 2019/62/94094/W as follows:

4. *Notwithstanding any details set out in the submitted plans or information, the hereby approved greenhouse, pergola and outside seating area shall not operate outside of the hours of 0900 to 2230 any day of the week.*

As the operating hours of the external areas are to remain the same, the only noise sources potentially associated with the proposed extension to restaurant operating hours relate to customers leaving the site. With cognisance to the comments of the Planning Inspector, these can be summarised as:

- Vehicle movements
- Pedestrian movements
- Taxis waiting on Luke Lane

The assessment of customer vehicle movements is addressed in ENS report ref: NIA/9041/20/9342/v1/Devour, Traffic, which is appended to this summary.

With regards to pedestrian movements, these were addressed within the RNMP, which was itself approved by Environmental Health at KC. To reiterate, no substantiated complaints have been received with regards to noise from the site.

With regards to taxis waiting at the entrance, these were also addressed within the RNMP. The Planning Inspector stated: *'There may of course be the occasional incidence of vehicles waiting here to collect customers from the appeal premises.'* Even if this were to be the case, it is unclear how **occasional** waiting vehicles can constitute a significant adverse impact or a noise nuisance, and such sporadic/transient events are not considered to be grounds for refusal.

In summary:

- Proposals for later opening hours than currently proposed have already been deemed acceptable by Environmental Health at KC
- No substantiated complaints relating to noise associated with the site have been received by KC
- Noise associated with customer vehicle movements has been assessed using pertinent guidance and has been shown to have negligible impact
- Noise associated with pedestrian movements and taxis has been addressed by way of a RNMP, the contents of which were deemed acceptable by Environmental Health at KC
- The operating hours of the greenhouse, pergola and outside seating area are to remain unchanged

On the basis of the above, it is considered that the slight extension to restaurant opening hours will not give rise to any unacceptable noise impact on any neighbouring residential uses.

I trust the foregoing is sufficient for your needs. Should you have any queries regarding the above, please do not hesitate to contact me.

Yours sincerely

Thomas Crabb
Environmental Noise Solutions Ltd.

Appendices

- ENS report ref: NIA/9041/20/9342/v1/Devour, Traffic
- Restaurant Noise Management Plan produced by Robert Halstead Chartered Surveyors & Town Planners