

Planning Statement in support of the application for the variation of the hours of operation of the restaurant, Devour at the Dyehouse, Woodlands Mill, Luke Lane, Thongsbridge, Holmfirth HD9 7TB

Summary.

Successful restaurants have a need to be able to maximise the hours of operation, in order to maintain viability, in what is a very difficult market place.

The hours requested are not in anyway exceptional or excessive and only allow the restaurant to trade until 23.30 on weekdays and at weekends.

The restaurant is set well away from any sensitive receptors and access is only obtained from the car park at the rear of the premisses.

Introduction

A planning application for the change of use, alterations and extensions to former mill buildings to form mixed use development comprising of food manufacturing, cookery school, café, shop, restaurant, cooking demonstrations/tasting areas and management offices/suite Outdoor seating areas, service yard, parking and associated landscaping works was approved in December 2017 (ref: 2017/91888).

A subsequent application for amending the plans and hours of operation was submitted in 2018 and while the amendment to the plans was accepted, the alteration to the hours was not.

This planning statement is submitted in support of a new application to vary the hours of operation, condition 15, of the restaurant only located in the Northern Building as referenced in condition 15.

The application is supported by this planning statement and a report by Environmental Noise Solutions Ltd, summarising the various acoustic reports and assessments that have been commissioned and clearly demonstrating that the hours will not create a material detriment to residential amenity through increased noise.

The report concludes:

5.00 NOISE IMPACT ASSESSMENT

5.01 A comparison of ambient noise levels with and without vehicle movements associated with the restaurant indicates no increase to the

measured noise levels. Using the noise impact magnitude descriptor scale in Table 4.2, this is assessed as negligible.

5.02 In accordance with the National Planning Policy Framework Planning Practice Guidance on Noise, the noise associated with customer vehicle movements at the restaurant is considered to 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

5.03 On this basis, it is considered that customer vehicle movements associated with the restaurant does not give rise to any unacceptable noise impact on any neighbouring residential uses.

History of the location of the restaurant.



The proposal for the restaurant in the 'northern building' (red marker) was agreed in 2018, it being moved from the original agreed location, in the southern building which was far closer to residential development with more problematic access.

Since then, the restaurant has become a well liked and quality addition to the restaurant scene in Holmfirth and Kirklees as a whole.

Access to the restaurant is via the car park at the rear and management practices have been put in place to ensure that this is the only way that customers enter and leave the premises.

It must be emphasised that there have been no substantiated complaints about noise from the restaurant affecting residential amenity from cars accessing and leaving the car park.

Planning Assessment.

Previous comments of the EHO from application 2020/70/90302/W

Variation of Hours (Condition 15): The proposed hours of opening for the Northern and Southern buildings appear to have been “swapped” to reflect the layout change (other than 30 minutes earlier opening for the Northern building). Delivery hours and days remain unchanged. These changes should present no issues in term of residential amenity.

Comments of the Planning Inspector on appeal APP/Z4718/W/20/3263244

The Inspector reached the following conclusion when he dismissed the Appeal.

As such, without the support of more robust and detailed survey findings and conclusions, I cannot conclude that the proposed variation in the hours of operation would not cause material harm to the living conditions of those resident within Royds Mill.

For the reasons I have set out, the proposal does not adequately or robustly demonstrate that the extension of hours would not cause material harm or reduce the quality of life of nearby residents. Thus, the proposal is therefore contrary to KLP policies LP24 and LP52.

However, as stated in the appended acoustic assessment, the Inspector had no empiric data to justify this assertion and the Environmental Health team had found the acoustic assessments to be ‘robust’.

Indeed, the report submitted supporting the application was fully compliant with best practice, had been reviewed and was in accord with statutory guidance and clearly stated:

In accordance with the National Planning Policy Framework Planning Practice Guidance on Noise, the noise associated with customer vehicle movements at the restaurant is considered to 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**

So, any reasonable person would conclude that the assessment had been robust and, as such, the Inspector can be considered to have

erred in his decision making process and put the validity of his reasoning at questions.

The Inspector had no qualifications in acoustics and does have a history of having his reports over turned on Judicial Review, for incorrectly applying policy.

Unfortunately, this only came to light after the time to apply for a Judicial Review has passed, but, there must still be a substantial doubt as to the validity of the Appeal Decision given the fact that the original report was 'robust'.

Local Plan Policy

The complex within which the restaurant is set is considered to be within the rural area of Kirklees and, as such, Policy LP10 Supporting the rural economy is relevant.

1. The economic performance of the rural economy will be improved by:

a. supporting the rural digital economy; b. **supporting the needs of small and medium sized enterprises; c. increasing local employment opportunities; d. supporting and increasing tourism related development, including encouraging new facilities and accommodation for tourists;** e. supporting sustainable business clusters, business incubation, business start-up proposals and home working; f. supporting farm diversification schemes, where the proposal would not adversely affect the management and viability of any farm holding, and in the case of farm shops, the goods to be sold are primarily those which are produced on the host farm or neighbouring farms.

Impact on Policy LP10

The additional hours will support the rural economy by supporting the needs of the restaurant for longer opening hours and thereby maintain and create job opportunities as well as providing a quality restaurant for tourists.

Policy LP52 requires proposals that have the potential to increase pollution from noise are accompanied with sufficient evidence to demonstrate that it would not reduce quality of life and the well-being of people to an unacceptable level.

To ensure 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.

Impact on Policy LP52, EP4 and EP6.

It is contended that the report by ENS Ltd (Appendix 1) fully, empirically and comprehensively demonstrates that there will be no material detriment to the residential amenity of the neighbours by noise generated as a result of the extended hours requested.

Additional supporting information.

The supporting acoustics report at Appendix 1 is a review of all of the reports previously submitted and, was compiled by an engineer who was not involved with the earlier application. As such it validates the earlier reports and no clearly demonstrates that there will be no material adverse impact from the extended hours requested.

Appendix 2 shows a traffic count from non-associated vehicles. For example, the number of non-associated vehicles between 22.46 and 00.00 was 48.

This clearly shows that there is a reasonable level of traffic, not associated with the restaurant using this road.

The potential increase in 16 cars using the road will not have any material impact on the noise already created by general traffic on the road.

Noise measurements have been taken in the apartments and they show that the internal level is 31 dB is well dB below the 35 dB recommended by the World Health Organisation.

Conclusion

In terms of planning policy the increase in hours can be justified in terms of the economic benefits that they will bring, in accord with Policy LP10 and the lack of impact on Policy LP52 as clearly demonstrated by Appendix 1.

Appendix 1 – Report by ENS Ltd

Appendix 2 – Traffic count on Luke Lane

Appendix 2

Traffic Count

Time	Associated	Non-Associated	Total	% from Devour
2006 – 2028	8	24	32	33 %
2116 – 2228	9	42	51	21 %
2246 – 0000	18	48	66	38 %