KIRKLEES METROPOLITAN COUNCIL
INVESTMENT & REGENERATION SERVICE

DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended) – SECTION 70

DELEGATED DECISION TO DETERMINE PLANNING APPLICATIONS

Reference No:	**2023/62/91282/E**
Site Address:	Drip Burger, 2, Brewery Lane, Thornhill Lees, Dewsbury, WF12 9HU
Description:	Installation of flue to rear of takeaway
Recommending Officer:	Elenya Jackson

DECISION – CONDITIONAL FULL PERMISSION

I hereby authorise the approval of this application for the reasons set out in the officer's report and recommendation annexed below in respect of the above matter.

Emma Thompson

AUTHORISED OFFICER

Date: 26th June 2023

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SITE DESCRIPTION – 2021/92051

Drip Burger, 2, Brewery Lane, Thornhill Lees, Dewsbury, WF12 9HU a two storey brick built structure which occupies a corner plot between Brewery Lane and Dale Street in Thornhill Lees.

The property is attached to adjoining structures in the street scene and forms the corner plot of a terrace to the east and has a link attachment to the west, AR Kitchens and Bathrooms. The area is mixed use with residential properties, takeaways and shops.

The site is currently used for a takeaway called ‘drip burger’.

The property is not within a Conservation Area and it is not a Listed Building.

DESCRIPTION OF PROPOSAL

The proposal is for the retention of an external flue and no other external alterations.

This application has been received as a result of an enforcement case.

The flue adjoins the eastern elevation of the property at ground floor level and extends to roof level. It is currently shown as an unpainted galvanised steel grey finish.

HISTORY OF NEGOTIATIONS/AMENDMENTS RECEIVED

The agent was informed of initial concerns relating to the scale of the proposal when coupled with its prominence in the street scene. The case officer explored possible mitigation measures in order to progress the application proactively.

RELEVANT HISTORY

2014/90418: Change of use from A1 shop to A5 takeaway Fish and Chip shop and external flue to rear elevation. FC

PUBLIC/MEMBERS RESPONSE

We are currently undertaking statutory publicity requirements, as set out at Table 1 in the Kirklees Development Management Charter. As such, we have publicised this application via neighbour notification letters which expired on 22/06/2022.

Following the above publicity, no representations were received

No parish/town council comments are required in this instance.

CONSULTATION RESPONSES

K.C. Environmental Health – no objections to the principle of the flue.

POLICY

The site is located within a Local Centre Boundary.

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory Development Plan for Kirklees is the Local Plan (adopted 27th February 2019).

Kirklees Local Plan (LP):

- **LP 1**– Achieving sustainable development
- **LP 2** – Place shaping
- **LP13** – town centres
- **LP 22** - Parking
- **LP 24** – Design
- **LP52** - pollution

National Policies and Guidance:
National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) updated 20th July 2021, the Planning Practice Guidance Suite (PPGS) first launched 6th March 2014 together with Circulars, Ministerial Statements and associated technical guidance.

The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications.

- **Chapter 12** – Achieving well-designed places
- **Chapter 14** – Meeting the challenge of climate change, flooding & coastal change.
- **Chapter 7** – Ensuring the vitality of town centres

ASSESSMENT

Principle of development:

The site is without notation on the Kirklees Local Plan. Chapter 2 of the NPPF introduces the presumption in favour of sustainable development, which is enshrined in policy LP1 of the Kirklees Local Plan. LP1 goes on further to stating that:

“The Council will always work pro-actively with applicants jointly to find solutions which mean that the proposal can be approved wherever possible,

and to secure development that improves the economic, social and environmental conditions in the area".

Policy LP24 in relation to design requires that the form, scale, layout, and details of all development "respects and enhances the character of the townscape, heritage assets and landscape…"

The principle of a flue on site has been established via the previously approved application 2014/90418, it is noted that it is relocated under this application but the principle of some form of extraction unit is considered acceptable.

It should also be noted that the site is within the Thornhill Lees local centre. The retention of a flue would assist a future business promote the vitality and viability of this local centre, with the Class E use forming a main town centre use. The development, in principle would accord with Policy LP13 and Chapter 7 of the NPPF. Subject to considerations in respect of visual amenity and impact on any nearby sensitive users the development can be supported.

Impact on visual amenity

The proposal has altered the western elevation of the building through the relocation of the flue. Due to the scale of the development, it would have limited vantage points from the public realm due to its siting on the western elevation of no.2 ;however, the scale of the proposal results in it having high levels of prominence in Dale Street when travelling in a easternly direction.

Officers consider that the scale of the development coupled with its location and stark appearance results in it appearing overly prominent. In order to mitigate the impact it is considered that the colour of the flue should be black. A dark colour will reduce its prominence within the public realm and mitigate as far as is practicable.

The existing use class of the site would be retained and the description of development therefore relates only to the installation of a flue.

Therefore, given the above and subject to a condition amending the colour of the proposal, the proposal is in accordance with Policies LP24 of the Kirklees Local Plan.

Impact on residential amenity:

The property is located just off Dale Street, in a mixed use area; however, the site adjoins an industrial unit referred to as 12 Dale Street.

There is a residential property approximately 13m to the north.

Due to the nature and location of the development, there are no concerns regarding detrimental impact due to overlooking, overshadowing/loss of light or overbearing.

KC Environmental Health have been consulted on the application and have not raised any concerns regarding noise or odour. However, they have advised that, Kirklees Council has powers under Section 80 of the Environmental Protection Act 1990 to prevent statutory nuisance including noise and odour 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 notice served using the above-mentioned legislation would be an offence for which the maximum fine on summary conviction is unlimited.

Therefore, the proposal would comply with Policies LP24 and LP52 of the Local Plan and Chapter 15 of the National Planning Policy Framework.

Impact on highway safety:

The proposal is for the addition of a Flue and therefore no consultation with KC Highways was deemed necessary. There are no implications for highway safety in this case.

Other matters:

Climate Change - On 12th November 2019, the Council adopted a target for achieving 'net zero' carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan pre-dates the declaration of a climate emergency and the net zero carbon target, however it includes a series of policies which are used to assess the suitability of planning applications in the context of climate change. When determining planning applications, the Council will use the relevant Local Plan policies and guidance documents to embed the climate change agenda.

Due to the size, scale and limited nature of development, it was not considered necessary to request specific measures to address the development's 'resilience to climate change.

Representations:

It should be noted that no representations have been received as a result of site publicity.

Conclusion:

The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF taken as a whole constitute the Government's view of what sustainable development means in practice.

This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development would constitute sustainable development and is therefore recommended for approval.

Decision Authorisation - Delegated Powers
Application Number: 2023/91282
Officer Recommendation: APPROVE

Conditions and Reasons

1. The development hereby permitted shall be carried out in complete accordance with the plans and specifications schedule listed in this decision notice, except as may be specified in the conditions attached to this permission, which shall in all cases take precedence.
Reason: For the avoidance of doubt as to what is being permitted and so as to ensure the satisfactory appearance of the development on completion, in the interests of residential amenity and highway safety and to accord with Policies LP1, LP2, LP21, LP22, LP24, and LP52 of the Kirklees Local Plan, and Policy within the National Planning Policy Framework.

2. Notwithstanding the approved plans, within one month of issue of the decision notice the flue, hereby approved, shall be painted Black (RAL9005) and thereafter maintained.
Reason: To aid the proposals integration with the street scene and to ensure that the development does not have an unacceptable impact on visual

amenity of the area, in accordance with the requirements of Policy LP24 of the Kirklees Local Plan.

Footnote:
The applicant is advised that Kirklees Council has 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 notice served using the above-mentioned legislation would be an offence for which the maximum fine on summary conviction is unlimited.
Footnote:
Detailed advice is available in “Control of Odour and Noise from Commercial Kitchen Exhaust Systems” by EMAQ Sep 2018 which is an update of “Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems” by DEFRA 2005.

Footnote;
The granting of planning permission does not authorise the carrying out of works within the highway, for which the written permission of the Council as Highway Authority is required. You are required to consult the Design Engineer (Kirklees Street Scene: 01484 221000) regarding obtaining this permission and approval of the construction specification. Please also note that the construction of vehicle crossings within the highway is deemed to be major works for the purposes of the New Roads and Street Works Act 1991 (Section 84 and 85). Interference with the highway without such permission is an offence which could lead to prosecution.

Plans and specifications schedule: -

Plan Type	Reference	Date Received
Existing Plans and Elevations	S01	28.04.2023
Planning Statement		28.04.2023

Pursuant to article 35 (2) of the Town and Country Planning (Development Management Procedure) Order 2015 and guidance in the National Planning Policy Framework, the Local Planning Authority have, where possible, made a pre-application advice service available, complied with the Kirklees Development Management Charter 2015 and otherwise actively engaged with the applicant in dealing with the application. The Case Officer informed the agent of concerns with the application and of the intention to attach a condition to the application relating to the colour of the scheme.