

**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:	2023/62/91350/E
Site Address:	Storage Yard/Car Park, Cannon Way, Dewsbury, WF13 1XH
Description:	Temporary change of use of storage/carpark site to facilitate catering trailer and associated waste storage
Recommending Officer:	Katie Wilson

DECISION – REFUSE

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

Sarah Longbottom

AUTHORISED OFFICER

Date: 04 August 2023

Officer Report

Site Description

2023/91350 – Storage yard / car park, Cannon Way, Dewsbury, WF13 1XH

The application site relates to roughly rectangular area of hardstanding lined by trees to three sides located near the head of the cul-de-sac at Cannon Way. The area is 1421 square metres and approximately half of a larger parking / storage area to the north.

The land is relatively flat and in the centre of the site are several black shipping containers that have been combined and adapted to create one single storey structure on a roughly T-shaped footprint. The base of the structure rests on breeze-blocks approximately 300mm above ground level. The structure also has a window to one side, a door to the other side and a row of seven windows with roller shutters on the front elevation facing north east.

To the north and west of the site are commercial and industrial buildings with associated car parks. These areas together with the application site are within a Priority Employment Area (PEA) on the Kirklees Local Plan (KLP). The PEA is on an inner bend of the River Calder, with Dewsbury Town Centre boundary to the north and on the opposite bank.

To the east and south of the site is a playing field with urban greenspace (UGS) status on the KLP. Beyond the playing field are residential premises.

Much of this area is in a flood plain of the River Calder and part of a strategic green infrastructure network on the KLP. There are no conservation areas or listed building in close proximity to the application site.

Description of Proposal

Permission is sought for the temporary change of use of storage / carpark site to facilitate catering trailer and associated waste storage.

The proposed catering trailer is already in situ.

It consists of several shipping containers combined to form one large internal space on a roughly T-shaped footprint, approximately 12.0m wide (along the front elevation) x 7.0m deep x approximately 3.0m high.

The base of the structure rests on breezeblock (approximately 0.3m high). The structure has a door to south eastern side and a window to opposite side together with a row of seven windows covered by two large roller shutters on the front elevation facing north eastward.

The whole structure is externally coloured black.

It would be centrally placed within the site with two accesses from Cannon Way, an entrance to the north and an exit to the south. There would be 13 car parking spaces along the south eastern boundary and a further three disabled car parking spaces adjacent to the north west boundary.

A Waste Management Layout drawing indicates a bin store in the southern corner of the site. It would have a 4.2m square footprint enclosed by a 2.1m high close boarded timber fence. It would provide space for the following:

- 1 x 1100L Residual Waste bin
- 1 x 660L Recycle bin
- 1 x 660L Food waste bin
- 1 x Cooking Oils Storage

There would be a bin collection point approximately 20m to the north west adjacent to the exit point onto the turning head of Cannon Way.

The proposed internal plan drawing indicates that the whole floor area would be for food preparation and storage with one sink and drainer together with one hand wash basin. Other equipment includes:- 1 freestanding fridge; 1 freestanding freezer; 1 full height drinks fridge; 1 chip fryer; one chip dump; 2 chicken fryers; 1 or 2 under counter fridges; 1 hot hold; 1 food warmer; approximately 9m standard height worktop and 5m cill height work top; central island 1.8m x 1.2m; Dry goods storage area approximately 3 sqm.

The further information document says that they expect the following split:
70% - hot cooked food and
30% - ambient packaged foods

The development would comprise a collection and delivery operation only. It would provide preparation and dispatch facilities for hot and cold food and grocery products ordered online for delivery or collection. Most products would be pre-cooked and prepared on site for collection and delivery.

It would be for collaboration with local independent and established name brands, offering to the online food marketplace around Dewsbury. This temporary scheme would inform and market test their virtual dining concept across the Dewbury area and aspiration for full proposal over the whole site of larger multi-brand food hall concept, with open dining and entertainment consideration, along the lines of BoxPark (London) and Hatch (Manchester)

This initial temporary scheme does not include indoor or outdoor seating areas or dining or entertainment experiences. It may be considered for a larger future scheme.

No bar or alcoholic sales

No sale beyond food and drink.

Two full time and two part time employees are intended to work the following:

- 12:00 noon to 02:00 am daily.
(lunch: 12:00 – 14:00; Dinner: 17:00 – 20:00; and late night: 21:00 – 02:00)

However, the submitted document goes on to say that the ability to trade 24 hours a day would be most advantageous for contact free online food deliveries, and safety and security in and around the area.

An outdoor lighting plan indicates 7no Quatro 2.0 LED die cast aluminium wall lights attached to the outside of the modified shipping containers and 6no I-Tron LED die cast aluminium street lights on steel columns (or similar) around the perimeter of the site.

Clean Water Provisions –A connection to an existing underutilised landlord supply is available to the site.

Foul Water Provisions –Grey waste from cleaning and food preparation will be collected via 2500ltr wastewater tank with periodic wet waste recycling collections.

Toilet Facilities -Provided via portable chemical toilet systems. 2no units available to staff and visitors, with waste and recycling managed on a recurring contract basis. Location not shown on site plans.

The amount of commercial waste is minimised with our delivery/collection only model. Bins for additional waste will be provided in key areas.

The aim of the temp application is to minimise any long-term disruption to the site. A new mains connection to water and sewage may be available and will be explored in detail following this proposed temp 'pilot' use.

History of negotiations/amendments received

Few details were initially provided with the original application so the case officer requested further information about where the customers would be coming from, catchment area, type of catering being proposed, other entertainment, clean and foul water, refuse storage and collection, hours of operation / opening hours, noise assessment report, flood risk assessment, artificial lighting, and parking layout.

Information was submitted on the 5th July 2023 in the form of details of the scheme document, waste management layout, two outdoor lighting data sheets, internal floor plan, indicative outdoor lighting layout, access and parking layout, mains supply distance and

Relevant Planning History

86/00909 – Renewal of unimplemented permission for extension to form storage area. Granted conditionally.

91/04654 – Erection of extension to engineering workshop. Conditional full permission

Representations

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: 28/06/2023

Five representations have been received. The points raised are summarised below:

In support:

- The site will feel safer and could purchase a warm snack for lunch or after work.

Against:

- It will increase noise pollution and vermin in the area.
- The site is causing noise nuisance, anti-social behaviour, and drug taking.
- It will increase footfall in the area and high speed traffic.

Consultation Responses

The following is a brief summary of Consultee advice (more details are contained in the Assessment section of the report, where appropriate):

- KC Planning Policy – Town centre sequential test not been passed. The proposal is considered a hot food takeaway and the Hot Food Takeaway SPD will apply to this proposal.
- KC Highways Development Management – Informal consultation. No objections
- KC Environmental Health – Concerns about cleaning and controlling hygiene, late night opening, noise, odours, cleaning and maintenance of the kitchen, artificial lighting. Addressed within the ‘Assessment’ section of the report.
- KC Waste Strategy – No objections. Waste Management Strategy recommended.
- KC Public Health – Provided up to date Public Health data. Recommend careful consideration due to the potentially adverse health impacts of an additional hot food take away.
- Designing out Crime Officer – No objection subject to the measures detailed within their advice being incorporated in the design.

- KC Flood Risk Management and Drainage – No objection.
- WY Police – No objections

Policy

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).

The site is within a Priority Employment Area (PEA) on the Kirklees Local Plan. It is also a built up area in a flood plain, part of strategic green infrastructure network and walkable route restrictive zone for hot food takeaways. The application site is potentially contaminated land and approximately 350m south of Dewsbury town centre boundary with ring road and River Calder in between.

Strategic Green Infrastructure Network on the Kirklees Local Plan. The site is also within a Bat Alert layer and a Low Coal Risk Area although falls in an area which is potentially contaminated land.

Kirklees Local Plan (LP):

- LP 1 – Presumption in favour of sustainable development
- LP 2 – Place shaping
- LP 3 – Location of new development
- LP 7 – Efficient and effective use of land and buildings
- LP 8 – Safeguarding employment land and premises
- LP13 – Town centre uses
- LP 14 – Shopping frontages
- LP 16 – Food and drink uses and the evening economy
- LP 20 – Sustainable travel
- LP 21 – Highways and access
- LP 22 – Parking
- LP 24 – Design
- LP 27 – Flood risk
- LP 28 – Drainage
- LP 30 – Biodiversity & Geodiversity
- LP 31 – Strategic Green Infrastructure Network
- LP 43 – Waste management hierarchy
- LP 47 – Healthy, active and safe lifestyles
- LP 51 – Protection and improvement of local air quality
- LP 52 – Protection and improvement of environmental quality
- LP 53 – Contaminated and unstable land

Supplementary Planning Guidance

- Highways Design Guide SPD
- Hot Food Takeaway SPD (adopted 21st September 2022) (HFT)
- Waste Management Design Guide for New Developments (Version 5, October 2020)

National Policies and Guidance:

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 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 2 – Achieving sustainable development
- Chapter 4 – Decision-making
- Chapter 6 – Building a strong, competitive economy
- Chapter 7 – Ensuring the vitality of town centres
- Chapter 8 – Promoting healthy and safe communities
- Chapter 9 – Promoting sustainable transport
- Chapter 12 – Achieving well-designed places
- Chapter 14 – Meeting the challenge of climate change, flooding and coastal change
- Chapter 15 – Conserving and enhancing the natural environment

Planning Practice Guidance:

Flood risk and coastal change (updated 25 August 2022)

Healthy and safe communities (updated 07 August 2022)

Assessment

The following matters are considered in the assessment below –

- 1) Principle of development
- 1) Impact on visual amenity (including any heritage considerations)
- 2) Impact on residential amenity
- 3) Impact on highway safety
- 4) Other matters – e.g. trees/ecology (e.g. bats)
- 5) Representations
- 6) Conclusion

1 – Principle of development:

The site is within a designated Priority Employment Area (PEA) on the Kirklees Local Plan, and within Flood zone 2. Any development would need to

demonstrate how it complies with Local Plan Policy LP8 (safeguarding employment land and premises).

In this case the first paragraph of policy LP8 is relevant:

'Proposals for development or re-development for employment generating uses (as defined in the Glossary) in Priority Employment Areas will be supported where there is no conflict with the established employment uses (as defined in the Glossary) in the area. In instances where the site is out of centre and the proposal includes main town centre uses then policy LP13 will need to be applied.'

The application site is currently used for storage and car parking, whilst the wider PEA is large and comprises a mixture of old and modern units, with limited room for expansion due to available land being in a flood zone.

Established employment uses (as defined in the Local Plan Glossary) are those within the former B1 – Business (a) (b) (c), B2 – General Industry, and B8 – Storage and Distribution. These are now Use Class E (with B2 and B8 remaining unaltered)

In terms of the proposed use, although the application form states that the use class is E (Commercial, Business and Service), the applicant has confirmed (additional information submitted July 2023) that the trailer (or unit) will be used for the preparation of both hot and cold food with a split of 70% hot cooked food and 30% ambient packaged food. They go on to confirm that the food will be available for collection and delivery only, with no public, customer eating or entertainment provided on site.

Whilst the proposed development is described as a '*catering trailer*', because the majority of food served will be hot, there would be no seating and food is for collection and delivery only, the proposal is considered as a hot food takeaway, and therefore as such falls within a use class of sui generis. The application form also states that the proposed development would create two full time and two part time jobs.

Employment generating uses (defined in the Local Plan Glossary) are the same as those for employment uses described above, but also include enterprises that provide jobs, such as retail, hotel, assembly and leisure, and certain non-residential Sui Generis uses (such as clubs, cash and carry, and builders merchants).

The Council's Planning Policy officers have been consulted and confirmed that the employment generating use is acceptable in terms of policy LP8 provided there is no conflict with the established employment uses in the area.

Policy LP8 also requires consideration of policy LP13 (Town centre uses) where an application site is in a Priority Employment Area, but not in a defined centre (principal town centres, town centres, district centres, or local centres), and the proposed use includes a main town centre use.

This is the case with the current application. The proposed use as a hot food takeaway is regarded as a main town centre use. However, the proposed unit is an out of town location, approximately 320m from the defined local centre of Savile Town to the south east, and 350m from Dewsbury Town Centre boundary (a defined principal town centre) to the north. It would therefore be expected to demonstrate that it would not undermine the vitality and viability of those Centres under LP13.

Part B of LP13 states that proposals which come forward for main town centre uses, which are located outside the defined centre boundaries, will require the submission of a Sequential Test. Main town centre uses shall be first located in the defined centres, then edge of centre locations, and only if there are no suitable sites shall out of centre locations be considered.

The scope and content of any sequential test should be agreed with the Council and be reflective of the scale, role and function of the proposal.

Proposals which fail the sequential test will not be supported.

With regard to the current proposal, the application was initially submitted with a covering letter which stated that the aim of the proposed development was to provide a service to local workers and the surrounding community. It was confirmed in email of 2.6.2023 that customers would include the employees and customers of neighbouring businesses within the industrial estate, also users of the adjacent playing fields.

However, further information from the applicant submitted on 5th July 2023, in a project details document states that the proposed hot food catering unit would provide hot and cold food and grocery products ordered online for delivery or collection, with a split of 70% hot food and 30% ambient packed food. No public, customer seating area or entertainment on site.

The same document goes on to say that the opening hours of the proposal are as follows:

Lunch: 12:00 – 14:00

Dinner: 17:00 – 20:00

Late night: 21:00 – 02:00

It also states that *'the ability to trade 24 hours a day would be most advantageous for contact free online food deliveries.'*

Planning Policy officers have reviewed this information and commented that it is considered that the catchment area of the proposal (ie where customers will come from to collect their food and drink) is larger than the industrial estate, particularly given that it refers to market testing a 'virtual' dining concept across the Dewsbury area, and the opening times appear to be limited in serving the surrounding businesses, therefore the sequential test has not been passed.

As such it is concluded that the application has failed to demonstrate a sequential approach, and that the proposal would not harm the viability and vitality of nearby Town Centres. To grant the proposal would be in breach of Policies LP2 and LP13 (a, b) & LP16 of the Kirklees Local Plan, and Chapter 7 of the National Planning Policy Framework.

As stated before, the proposed use is considered a hot food takeaway. As such Kirklees Hot food Takeaway SPD is relevant.

HFT1 (Public Health Toolkit) of the SPD sets out that proposals that are not accepted by the toolkit should be refused, unless other material considerations indicate otherwise.

Details supplied by Planning Policy officers state that in this instance the site is a deprived area with a high proportion of adults overweight, and high prevalence of diabetes. It scores above the Kirklees average / Kirklees benchmark on all but 1 of the indicators. As such it is above an acceptable threshold and should be refused on public health ground.

HFT2 (Town centre Vitality and Viability) The application site is not within a principal town, town, district or local centre; however when undertaking the main town centre use sequential test consideration needs to be given to the hot food takeaway unit thresholds set out in table 6 of the SPD.

Please see the policy officer comments above. As stated, the catchment area has not been agreed and sequential test not passed. The SPD advises that when undertaking the main town centre use sequential test consideration needs to be given to the HFT unit thresholds set out in table 6 of the SPD.

HFT3 (Proximity to schools) the application site is within 400m of a secondary school. If planning permission were granted hours should be restricted to so that it is not open to the public before 5pm on weekdays and there should be no over the counter sales before that time (including collection). This would restrict requested opening hours and ability to serve employees of the industrial estate.

HFT4 (Noise abatement and extraction of odours) All applications must be accompanied by an Odour and Noise Impact Assessment. This should include full details of the extraction system proposed including the internal layout and external appearance showing the location of all the main components of the system, together with details of any necessary noise attenuation and odour abatement measures.

Odour and noise impact assessments have not been submitted. The applicant has indicated that a report by an acoustic consultant has been commissioned. However, as this has not been submitted and the building is already in situ, the applicant has failed to demonstrate that the proposed use as a hot food takeaway will not have an adverse impact upon public amenity and residences in the area.

HFT5 (Waste disposal) All applications must be accompanied by a Waste Management Strategy which should cover storage and disposal of waste including provision of grease traps where appropriate. It should also consider recycling and the use of sustainable food packaging, such as cardboard boxes and paper straws.

The application has been assessed by Kirklees Waste Management, they note that the applicant points out that the amount of commercial waste is minimised with their delivery / collection only model, and that additional bins will be provided in key areas. They also note that the applicant would accept a condition that they provide a waste management strategy (as detailed in the HFT SPD) and additional plans have been submitted which show position and dimensions of a bin store, together with details of what would be stored and where the collection point would be.

They find the dimensions, entrance arrangements and screening details acceptable, and that the provision of a waste management strategy should address issues related to litter bin provision if required.

HFT5 (Takeaway design and community safety) When determining applications for hot food takeaways consideration will be given to safety and residential amenity. The advice of West Yorkshire Police and the Community Safety Partnership in relation to personal safety or crime and disorder will be given significant weight in determining such planning applications.

In this instance the West Yorkshire police architectural liaison officer has been consulted and raises no objections.

HFT6 (Highway safety) Applications for hot food takeaways will be refused where the use is considered to have an unacceptable adverse impact on highway efficiency and safety.

In summary, the proposed hot food takeaway is in a deprived area (worse 20 to 30%), with a high proportion of adults overweight and a high prevalence of diabetes. It does not meet acceptable threshold for being acceptable on public health grounds and therefore is recommended for refusal due to its potentially adverse impact upon public health.

Flood risk issues:

Policy LP27 of the Local Plan in relation to Flood Risk needs to be considered in detail along with Policies set out in the NPPF and guidance in the PPG as the application site is within Flood Zone 2 on the Environment Agency Flood Risk Map for Planning and SFRA.

This application, located in Flood Zone 2 (Medium risk of flooding), having a floorspace of below 1,000sqm, is therefore considered as 'non-major' development and as such a flood risk sequential test is required to be carried out. (Paragraph: 051 NPPG Flood risk and coastal change).

For individual planning applications subject to the Sequential Test, the area to apply the test will be defined by local circumstances relating to the catchment area for the type of development proposed. Given that the trailer would provide the necessary preparation and dispatch facilities for hot and cold food and grocery products ordered online for delivery or collection, it is considered that the catchment area of the proposal is larger than the industrial estate, particularly given that it refers to market testing a 'virtual' dining concept' across the Dewsbury area and the opening times appear to be limited in serving the surrounding businesses. Therefore, the area of search will need to be much wider than the PEA.

In accordance with LP27 the whole Kirklees district should be the starting point for the sequential test, with applicants required to provide justification where a smaller area of search is proposed. If following application of the sequential test, there are no reasonably available sites which could accommodate the development in zones with a lower probability of flooding, it should also be demonstrated that a sequential approach has been applied within sites

As such, insufficient and inadequate information has been submitted to enable the Local Planning Authority to satisfactorily conclude whether the development has been directed to areas at the lowest probability of flooding, following a sequential risk based approach. The proposal is therefore contrary to Policy LP27 of the Kirklees Local Plan, the Planning Practice Guidance 'Flood risk and coastal change' and policies within Chapter 14 of the National Planning Policy Framework.

2 –Impact on visual amenity:

In terms of visual amenity, general design considerations are set out in Policy LP24 of the Local Plan. It requires *'the form, scale, layout and details of all development respects and enhances the character of the townscape, heritage assets and landscape'*.

The proposal will be considered having regard to the aims of LP24a, and LP16g) of the Kirklees Local Plan.

The application site is roughly rectangular area of hardstanding lined by mature trees to three sides located near the head of the cul-de-sac at Cannon Way. The area is a former car park, without markings, and approximately half of a larger parking / storage area to the north.

The land is relatively flat and in the centre of the site are several black shipping containers that have been combined and adapted to create one single storey structure on a roughly T-shaped footprint. The base of the structure rests on breeze-blocks approximately 300mm above ground level.

To the north and west of the site are commercial and industrial buildings with associated car parks, whilst to the east and south of the site is a playing field and beyond the playing field are residential premises.

In this instance the building is single storey and considered of moderate scale, screened to some extent by the trees around the perimeter. It is painted entirely black and surrounded by much larger industrial buildings with associated car parks to the north and west, but an open playing field to the east and south with residential premises beyond. As such in officers' opinion it is considered that it has limited impact upon the established character of the area.

This excludes any advertising which remains outside the remit of this application and to be applied for subsequently should this be accepted.

3 – Impact on residential amenity:

The application site is at least 75m from the nearest residential premises. As such it is considered that the proposal would not have an overbearing or overshadowing impact upon occupants of neighbouring properties.

The application has also been assessed by environmental health officers who have some concerns that the proposed late night opening hours, or 24 hour opening, could encourage noise and disturbance in the wider vicinity. They therefore recommend a condition restricting opening hours to 11pm Monday to Saturdays and 10pm Sundays and Bank Holidays.

They also note that a report by an acoustic consultant has been commissioned to assess the noise and disturbance from the production unit. They recommend a condition to secure the production of a noise assessment.

Furthermore, they recommend a condition to secure a kitchen extract scheme and external artificial lighting, to safeguard the amenities of occupiers of nearby properties.

Whilst these could be conditioned, the applicant has not demonstrated through the submission of a noise report and kitchen extract scheme that the proposed development will not have a detrimental impact upon residential properties or public open spaces.

4 – Impact on highway safety:

Parking

LP16d) and e) of the Kirklees Local Plan is relevant for the availability of public transport, parking, servicing and highway safety. Policy HFT 7 of the Hot Food Takeaway SPD sets out that if takeaways have an adverse impact on highway efficiency and safety they will be refused. The Highways Design Guide SPD provides specific guidance on to acceptable parking, which advises that parking considerations should be factored into the design process at the earliest opportunity in order to ensure that the location, standards and specifications for on-and off-street parking help to achieve good design. The Highways Development Management Officer has been informally consulted and raises no objections to the proposal.

The application site is part of a larger car park, however there are no parking bays marked out and historic aerial photos held on the Kirklees mapping system show little in the way of formal parking at the site in the last 10 years or so. Nearby industrial units appear to have their own associated parking areas marked out and closer to the buildings. As such it is considered that there would be very limited displacement parking as a result of the proposed development.

The proposed access and layout plan indicates a one way system and parking spaces for approximately 14 cars together with an area for waste products to be stored and collected from the site. These details have been looked at by highways officers and are considered acceptable.

No details of delivery frequency or times have been submitted, but given its location near the head of a cul-de-sac and an unclassified, but adopted road in an industrial area, it is considered that there would be no significant impacts upon highway safety.

It is noted that the Environmental Health response set out that an Electric Vehicle Charging Point should be conditioned suitable for non-residential short stay parking with rapid charging points, this is considered acceptable should the application be approved.

4b – Refuse storage and collection:

The Waste Strategy (Refuse and Recycling) Team was consulted on the submitted locations of the bin storage shown on drawing No PL06. This shows a bin storage area in the southern corner of the site surrounded by timber fencing and a collection point to the north west near the proposed exist.

The dimensions, location and screening are all thought to be acceptable. They add that the provision of a waste management strategy for the number and position of litter bins around the site would be addressed is required.

5 – 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.

The applicant has submitted a supplementary statement or other information to explain how the proposed development would help to address or combat climate change effects. It mentions that the proposed development would use mains electricity and the structure is made of re-cycled and locally sourced shipping containers that are insulated, together with LED lighting throughout. Measures could also be imposed to encourage the use of sustainable modes of transport including provision for an electric vehicle charging point and cycle storage as set out in section 4c of the Assessment.

Given the improved Building Regulations setting out high requirements for insulation and energy efficiency, the proposal would be of positive benefit to providing an energy efficient.

Biodiversity / Strategic Green Infrastructure Network

Whilst considering Biodiversity and the site location within a Bat Alert area and the Strategic Green Infrastructure Network, LP 30 and LP 31 of the Kirklees Local Plan are relevant.

It is considered that the development of this hard surfaced and otherwise of low biodiversity value site for a hot food takeaway outlet would not affect the function or connectivity of the Strategic Green Infrastructure Network as required by Policy LP31.

Whilst it is acknowledged that the site is located within an identified bat alert area, the proposal for a new hot food takeaway development is considered unlikely that the proposals would have an impact on the bat population. To meet the requirements of biodiversity net gain, a bat box would need to be conditioned, but the building is unsuitable for such a feature and no alternatives are considered necessary.

Drainage

The submitted FRA mentions that the building has been designed so that it rests on breeze blocks approximately 200mm above ground floor level and the lead local flood authority raise no objections.

Notwithstanding the above, the proposal has insufficient and inadequate information to enable the Local Planning Authority to satisfactorily conclude whether the development has been directed to areas at the lowest probability of flooding, following a sequential risk based approach.

In terms of foul water drainage, KC Environmental Health have noted that the following information has been provided in relation to foul water: - Foul Water Provisions – Grey waste from cleaning and food preparation will be collected via 2500ltr wastewater tank with periodic wet waste recycling collections.

Toilet Facilities - Provided via portable chemical toilet systems. 2no units available to staff and visitors, with waste and recycling managed on a recurring contract basis.

Whilst they accept the information provided they have concerns that cleaning and controlling the hygiene of externally provided portable toilets can be problematic and would expect a robust cleaning schedule to be provided within the food safety management plan moving forward.

Public Health

Policy LP47 of the Kirklees Local Plan states the council will create an environment which supports healthy, active and safe communities and reduces inequality. Policy LP47j) goes on to state that healthy, active and safe lifestyles will be enabled by working with partners to manage the location of hot food take-aways particularly in areas of poor health. To achieve this, KC Public Health would assess proposals under a Toolkit to determine its impact on the surrounding area in accordance with Policy HFT1.

KC Public Health have assessed the application by considering local details such as:

- Index of Multiple Deprivation (IMD) quintile
- % of adults overweight
- % of adults obese
- % of 5-year-olds with excess weight
- % of 11-year-olds with excess weight
- Diabetes prevalence rate
- Coronary heart disease prevalence rate

KC Public Health have produced a scoring category based on these indicators of deprivation, and if it is scored above 20 then the proposal should be considered carefully due to the health impacts of the proposal. The site is considered to be within a location with an average score for Kirklees rated at 26, therefore it is considered that the proposal would likely result in adverse impacts on public health and so the proposed development should be refused on these grounds too.

Environmental Health

Contaminated Land

Following referral to KC Environmental Health, the application site was identified to be within a potentially contaminated land area due to its former use as a railway siding and goods depot. A condition was advised to require reporting any unexpected contamination and it is recommended that this be conditioned should the application be approved.

Noise and Odour

Policies LP16b), LP51 and LP52 of the Kirklees Local Plan and Policy HFT4 of the Hot Food Takeaway SPD is relevant in addressing proposals with the potential to have detrimental impacts on local air quality and pollution from other sources including odour.

In addition to this, Policy LP52 of the Kirklees Local Plan states that proposals where potential for this disturbance is identified that this must be accompanied by evidence to show 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.

The Environmental Health Officer is concerned that present and future residents, together with workers in the industrial estate, and public amenity would be impacted by noise and odour resulting from the proposed hot food takeaway. They request submission of noise and odour assessment reports by condition.

In planning officers view, as the proposed structure is already in situ, at this stage the applicant has failed to demonstrate through the submission of noise and odour assessment reports that the proposal would not be harmful to public amenity or residential amenity of nearby occupiers

In the absence of this information the proposed development would conflict with the residential amenity requirements of Policies LP16(b) and LP24 and the objectives for managing pollution in Policy LP52 of the Local Plan and Chapters 12 and 15 of the Framework.

Late Night activity/littering and Crime

In relation to general disturbance, littering and anti-social behaviour/crime impacts of the proposal, LP16b) and c) of the Kirklees Local Plan and HFT 5 and 6 of the Hot Food Takeaway SPD are relevant in assessing the proposed development to be considered.

In this instance the application site is within a larger car park close to industrial area, public open space and residential properties beyond. The proposed opening hours are until 2:00am and the applicant would prefer to test 24 hour opening.

KC Environmental Health was consulted and suggested a condition to have hours of use limited to 11pm Monday to Saturdays and to 10pm on Sundays and bank holidays. However the Crime Prevention Officer was consulted but did not object to the application. As there are concerns that the late night opening of the proposed development would encourage noise disturbance to the wider community accessed via adjacent open space, it is recommended that a condition restricting opening hours to those recommended by environmental health officers is applied, should the application be approved. The use could also promote littering along the highway and streets nearby. This could however be addressed through the use of conditions to secure litter bin provision on the site and details of a strategy for daily litter picking in the nearby area to promote good design in accordance with Planning Practice Guidance 'Healthy and safe communities', Policy LP24 and Chapter 12 of the NPPF.

Artificial Light

The installation of artificial lighting sources can disrupt both nearby residents sleeping patterns and wildlife. Environmental health officers note the additional information supplied with the application and recommend a condition to ensure and the relevant information is supplied and approved before installation. It is recommended that this is applied, should the application be approved.

6 – Representations:

Five representations were received during the course of assessing the application.

In support:

- The site will feel safer and could purchase a warm snack for lunch or after work.

In response: This is noted, but in officers' opinion would not outweigh the harmful impacts of the principal of the proposed development.

Against:

- It will increase noise pollution and vermin in the area.

In response: this has been assessed in sections on noise and odour above and lack of relevant assessment reports is considered failure to demonstrate that it would have an acceptable impact on public amenity and residential amenity.

- The site is causing noise nuisance, anti-social behaviour, and drug taking.

In response: This is noted.

- It will increase footfall in the area and high speed traffic.

In response: This is noted.

7 – Conclusion:

This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the adverse impacts of granting permission would significantly and demonstrably outweigh any benefits of the development when assessed against policies in the NPPF and other material consideration.

In the absence of a Sequential Test to demonstrate that the proposed development is sited appropriately to avoid increased flood risk and that it would not unduly impact on the safety of future occupiers within Flood Zone 2 as identified in the PPG Flood and Coastal Change, LP27 of the Kirklees Local Plan and Chapter 14 of the NPPF, Officers recommend refusal.

Further, it has not been demonstrated that the proposed development would have an acceptable impact on the living conditions of neighbouring residents, and public amenity with regard to noise and odours. The proposed development would therefore conflict with the residential amenity requirements of Policies LP16(b) and LP24b and the objectives for managing pollution in Policy LP52 of the Local Plan, and Chapters 12 and 15 of the Framework.

In the absence of a Sequential Assessment for food and drink uses outside of a defined centre as required by LP13 and LP16, it has not been demonstrated that the proposed development would have an acceptable impact on the character, function, vitality and viability of the locality and shopping centres. The proposed development would therefore conflict with the requirements of Policies LP13 and LP16 of the Local Plan and chapter 12 of the Framework.

Recommendation

Refuse

Decision Authorisation – Delegated Powers

Application Number: 2023/91350

Officer Recommendation: Refuse

1. In accordance with LP13 & LP16 of the Kirklees Local Plan and Chapter 7 of the National Planning Policy Framework, Local Planning Authorities must apply a sequential approach to Main Town Centre uses that are not in an existing centre. It is concluded that the application has failed to demonstrate a sequential approach and that the proposal would not harm the viability and vitality of nearby Town Centres. To grant the proposal would be contrary to Policies LP2 and LP13 (a, b) & LP16 of the Kirklees Local Plan, and Chapter 7 of the National Planning Policy Framework.
2. The application has failed to demonstrate through a sequential risk based approach that the development has been directed to an area at the lowest probability of flooding. The proposal is therefore contrary to Policy LP27 of the Kirklees Local Plan, the Planning Practice Guidance 'Flood risk and coastal change' and policies within Chapter 14 of the National Planning Policy Framework.

3. The application has failed to demonstrate through submission of adequate noise and odour assessment reports that the proposed development would not be harmful to public amenity and living conditions of future and neighbouring occupiers. To grant planning permission would be in breach of Policies LP16(b), LP24b and LP52 of the Kirklees Local Plan, and policies within Chapter 12 of the National Planning Policy Framework.

4. The proposed hot food takeaway is located within a deprived area (worse 20 to 30%), with a high proportion of adults overweight and a high prevalence of diabetes. The development does not meet the threshold for being acceptable on public health grounds and is considered to have a potentially adverse impact upon public health. To grant planning permission would be contrary to Policy LP16 of the Kirklees Local Plan and The Hot Food Takeaway Supplementary Planning Document.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Location plan	Dwg No. 23-005-PL01	-	09.05.2023
Existing site plan	Dwg no. 23-005-PL02		09.05.2023
Proposed site plan	Dwg no. 23-005-PL03	Rev A	09.05.2023
Proposed access and Parking plan	Dwg no. 23-005-PL08		05.07.2023
Proposed floor plan	Dwg no. 23-005-PL04		09.05.2023
Proposed internal layout	Dwg no. 23-005-SK01	Rev A	05.07.2023
Proposed elevations	Dwg no. 23-005-PL05		09.05.2023
Supporting information:			
Flood risk assessment			09.05.2023
Outdoor lighting datasheet			05.07.2023
Mains supply distance plan	Drawing No. 23-005-SK04	-	05.07.2023
Indicative outdoor lighting layout drawing	Dwg no. 23-005-PL07	-	05.07.2023
Outdoor lighting data sheet 2			05.07.2023
Waste Management layout dwg	Dwg no 23-005-PL06	Rev A	05.07.2023
Project details document dated June			05.07.2023

Plan Type	Reference	Version	Date Received
2023			
Climate change statement			09.05.2023
Planning statement / covering letter dated 5 th May 2023.			09.05.2023

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 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. Further information was received during assessment of the application, but was not considered to overcome the concerns about the principle of the proposal.

Report Dated: 04/08/2023