

**KIRKLEES METROPOLITAN COUNCIL  
INVESTMENT & REGENERATION SERVICE**

**DEVELOPMENT MANAGEMENT**

**Town and Country Planning Act 1990 (as amended) – SECTION 73**

**DELEGATED DECISION TO DETERMINE PLANNING APPLICATIONS TO  
CARRY OUT DEVELOPMENT WITHOUT COMPLIANCE WITH PLANNING  
CONDITIONS PREVIOUSLY ATTACHED**

Reference No:	<b>2023/70/92071/E</b>
Site Address:	Croft Farm, Clough Lane, Hightown, WF15 8AD
Description:	Variation of condition 8 (opening hours) on previous permission 2018/92393 for demolition of existing shop and ancillary buildings and erection of shop, ancillary storage, staff room, toilet facilities, ice cream parlour and cafe extension, and formation of additional parking spaces
Recommending Officer:	Edward Cheseldine

**DECISION – VARIATION OF CONDITION APPROVED**

**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: 13-Sep-2023

## **Officer Report**

2023/92071 - Croft Farm, Clough Lane, Hightown, WF15 8AD

### **Site Description**

The application relates to a farm which has a café within the site. The café is a single storey unit which has agricultural features. The café has a large associated customer car park. There is outdoor seating to the east of the site. Despite the farm setting, there are residential dwellings in proximity to the café.

Clough Lane is classified as a Primary A road.

The site is located within designated green belt.

### **Proposal Description**

The applicant is seeking permission for the variation of condition 8 (opening hours) on previous permission 2018/92393. The following is a schedule of alterations to the above permission:

*The café shall not be open to customers outside the hours of 10:00 to 17:00 Monday to Sunday (including Bank Holidays).*

The application is seeking to vary this condition to allow opening from 9am.

Application 2019/93868 was for the discharge of pre-commencement conditions prescribed on 2018/92393, which based on the evidence presented under the application, we consider there has been a lawful start to the development.

### **History of Negotiations**

None necessary.

### **Relevant Planning History**

2018/92393 - Demolition of existing shop and ancillary buildings and erection of shop, ancillary storage, staff room, toilet facilities, ice cream parlour and café extension, and formation of additional parking spaces – Full permission granted.

2019/92059 - Variation of condition 8 (opening hours) on previous permission 2018/92393 – Refused.

2019/93057 - Variation condition 2 (plans) on previous permission  
2018/92393 – Removal or modification of condition.

2019/93868 - Discharge conditions 3-7, 9, 11, 13 on previous permission  
2018/92393 – Discharge of conditions split decision.

## **Representation**

This application was advertised via neighbouring notification letters which expired on 23 August 2023, as a result of the publication there were no representations received.

## **Consultation Responses**

KC Environmental Health – No comment

## **Policies**

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 27<sup>th</sup> February 2019).

The site is located within the Green Belt on the Kirklees Local Plan.

On 12<sup>th</sup> 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 predates 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.

## **Kirklees Local Plan Policies**

- **LP 1** – Achieving sustainable development
- **LP 2** – Place shaping
- **LP 22** - Parking
- **LP 24** – Design

- **LP 52** – Protection and improvement of environmental quality
- **LP53** – Contaminated and unstable land

### **National Policies and Guidance:**

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 20<sup>th</sup> July 2021, and the Planning Practice Guidance Suite (PPGS) first launched 6<sup>th</sup> 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 12 – Achieving well-designed places
- Chapter 13 – Protecting Green Belt land
- Chapter 15 – Conserving and enhancing the natural environment

### **Assessment**

- 1) Principle of development
- 1) Impact on visual amenity
- 2) Impact of residential amenity
- 3) Impact on highway safety
- 4) Representations
- 5) Conditions
- 6) Conclusion

#### Principle of development

The application site is located in Green Belt where in accordance with paragraph 147 of the National Planning Policy Framework (NPPF) inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 148 of the NPPF states that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations. Paragraph 149 stipulates a local planning authority should regard the construction of new buildings as inappropriate in Green Belt, with exceptions to this including limited infilling or

the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.

The principle of development has been accepted under the original planning permission subsequently implemented. This application continues the use and will not change as a result of the proposed variation of condition.

#### Impact on visual amenity

There will be no impact to visual amenity under this variation of condition application.

#### Impact on residential amenity

A condition was imposed under application 2018/92393 for the restriction of opening hours in order to mitigate any impact noise impact from the café site during early opening hours. Letters of objection were received under application 2018/92393 in relation to previous noise disturbances caused by the café. Officers considered the customer capacity of the site and proximity to dwellings to be sufficient for the condition of opening hours to be restricted to 10am. The applicant confirmed their agreement to the condition at the time of the approval of application 2018/92393.

This is the second application for the amendment of opening hours. Application 2019/92059 was refused due to the impact it would have on the residential amenity of neighbouring occupants in close proximity to the café area.

In terms of this application, there has been the submission of a supporting statement which notes that adjacent dwellings No. 31, 33 & 35 have now been sold to the farm and are set within the boundary of the site. The closest residential dwelling is No. 46 which is estimated to be ~28.40m from the entrance of the site, on the other side of Clough Lane. After a discussion with Environment Health, the distance between the café site and nearest occupant is considered satisfactory in mitigating any noise disturbance.

In light of this, it is deemed that openings times of the café can be changed to 9am-5pm.

#### Impact on Highway Safety

The application will amend the times of use of the café. This will affect the number of vehicles using the site before 10am. Although there will be a variation, the new opening hours will not be within a peak time that is considered to affect the current parking and access requirements to a detrimental effect. It has been deemed that the current provisions are sufficient for the capacity of users during the new opening hours.

### Representations

None.

### Conditions

The following conditions were included within the granting of full permission app 2018/92393:

1. ~~The development shall be begun not later than the expiration of three years beginning with the date on which permission is granted.~~  
The development has been implemented and as such this condition is not required.

2. ~~The development hereby permitted shall be carried out in complete accordance with the following approved plans and documents: Location Plan, Blackwell's, dated 7th August 2018. Site Plan, 16/126/2 REV B, dated 10th December 2018. Extension & Proposed, 16/126, dated 7th August 2018. Supporting Statement, Robert Halstead, dated 7th August 2018. Retail Sequential Test, Robert Halstead, dated 7th August 2018. Coal Mining Risk Assessment, Robert Halstead, dated 7th August 2018.~~

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.

*In line with noted plans on application 2018/92393 subject to non-material amendments set out in 2019/90315 and the variation of condition 2, variation under application 2019/93868.*

3. ~~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.~~

The developments shall be carried out in accordance with the submitted plans subject to the approved Phase I report set out in the (ref 3983) Contaminated Land Report, dated November 2020 as according with application 2019/93868.

*This condition was discharged under application 2019/93868.*

~~4. Where further intrusive investigation is recommended in the Preliminary Risk Assessment approved pursuant to condition 3 groundworks shall not commence until a Phase II Intrusive Site Investigation Report has been submitted to and approved in writing by the Local Planning Authority. The developments shall be carried out in accordance with the submitted plans subject to the subject to the approved Phase II report set out in report set out in the (ref 3983) Contaminated Land Report, dated November 2020 and the (ADJ/DJM/1114) MDJ Gas Report, dated 23 January 2019 as according with application 2019/93868.~~

*This condition was discharged under application 2019/93868.*

~~5. Where site remediation is recommended in the Phase II Intrusive Site Investigation Report approved pursuant to condition 4 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.~~

~~The developments shall be carried out in accordance with the submitted plans subject to the subject to the approved Phase II report set out in report set out in the (ref 3983) Contaminated Land Report, dated November 2020 and the (ADJ/DJM/1114) MDJ Gas Report, dated 23 January 2019 as according with application 2019/93868.~~

*This condition was discharged under application 2019/93868.*

~~6. Remediation of the site shall be carried out and completed in accordance with the Remediation Strategy approved pursuant to condition 5. 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.~~

*This condition was discharged under application 2019/93868. Remediation of the site was previously approved.*

~~7. 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 that part of 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.~~

*This condition was discharged under application 2019/93868. Remediation of the site was previously approved.*

~~8. The café shall not be open to customers outside the hours of 10:00 to 17:00 Monday to Sunday (including Bank Holidays).~~

The café shall not be open to customers outside the hours of 09:00 to 17:00 Monday to Sunday (including Bank Holidays).

*Condition amended subject to this application 2023/ 92071.*

~~9. The use hereby permitted shall not begin until details of the installation and/or erection of any extract ventilation system, including details of the methods of treatments of emissions and filters to remove odours and control noise emissions have been submitted 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, operated at all times when the commercial kitchen is in use and maintained in accordance with the manufacturer's instructions.~~

The proposed installation and/or erection of any extract ventilation system submitted to the Local Planning Authority shall be retained, operated at all times when the commercial kitchen is in use and maintained in accordance with the manufacturer's instructions and retained thereafter as according with application 2019/93868.

*This condition was approved under application 2019/93868, for which the details of the ventilation/extraction system were approved, noting the system to be installed and retained thereafter.*

10. The shop shall not be open to customers outside the hours of 9:00 to 17:00 Monday to Sunday (including Bank Holidays).

**Reason:** In the interests of the amenity of nearby occupiers and to accord with Policies BE1 and EP4 of the Kirklees Unitary Development Plan, Policy PLP52 of the Kirklees Publication Draft Local Plan and Government policy in Chapter 15 of the National Planning Policy Framework.

~~11. Before the development is brought into use 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. 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.~~

The proposed details of the electric vehicle charging points as detailed in Temporary Electrical Solutions Report, dated 26 November 2019, submitted to the Local Planning Authority shall be installed and retained thereafter as according with application 2019/93868.

*This condition was approved under application 2019/93868.*

~~12. The protective fencing shown on Plan reference 16/126/2 Rev B received on the 10th December 2018 shall be erected in accordance with BS5837 before development commences. The fencing shall be retained for the duration of the works approved under this application.~~

*Development works as part of application 2018/ 92393 have been completed as such the protective fencing is no longer required.*

~~13. Notwithstanding the submitted plans and information, a scheme for the surfacing and drainage of the areas to be used by vehicles and/or pedestrians shall be submitted to and approved in writing by the Local Planning Authority before any groundworks commence. The areas shall then be surfaced and drained in accordance with the approved details before the new buildings hereby approved are first brought into use and thereafter retained.~~

The approved surfacing and drainage details approved in the plans and information submitted under application 2019/93868, submitted to the Local Planning Authority, shall be installed, and retained thereafter as according with application 2019/93868.

*This condition was approved under application 2019/93868.*

## Conclusion

The application to vary Condition 8 of the planning permission on previous permission 2018/92393 for the opening times of the café have been assessed against relevant policies in the development plan as listed in the policy section of the report, the NPPF and other material considerations.

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.

As set out above, 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.

**Recommendation**

**Approve**

## **Decision Authorisation - Delegated Powers**

**Application Number:** 2023/92071

**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 to ensure the satisfactory appearance of the development on completion, and to accord with Policy LP24 of the Kirklees Local Plan, and the aims of the National Planning Policy Framework.

1. The developments shall be carried out in accordance with the submitted plans subject to the approved Phase I report set out in the (ref 3983) Contaminated Land Report, dated November 2020 as according with application 2019/93868.

**Reason:** To ensure the safe occupation of the site in accordance with Policy LP53 of the Kirklees Local Plan and paragraph nos. 183 and 184 of the National Planning Policy Framework

2. The developments shall be carried out in accordance with the submitted plans subject to the subject to the approved Phase II report set out in report set out in the (ref 3983) Contaminated Land Report, dated November 2020 and the (ADJ/DJM/1114) MDJ Gas Report, dated 23 January 2019 as according with application 2019/93868.

**Reason:** To ensure the safe occupation of the site in accordance with Policy LP53 of the Kirklees Local Plan and paragraph nos. 183 and 184 of the National Planning Policy Framework

3. The development shall be carried out in accordance with the submitted plans and in accordance with the approved Phase II report set out in (ref 3983) Contaminated Land Report, dated November 2020 and the (ADJ/DJM/1114) MDJ Gas Report, dated 23 January 2019 as according with application 2019/93868.

**Reason:** To ensure the safe occupation of the site in accordance with Policy LP53 of the Kirklees Local Plan and paragraph nos. 183 and 184 of the National Planning Policy Framework

4. The café shall not be open to customers outside the hours of 09:00 to 17:00 Monday to Sunday (including Bank Holidays).

**Reason:** In the interests of the amenity of nearby occupiers and to accord with Policy LP52 of the Kirklees Local Plan and Government policy in Chapter 15 of the National Planning Policy Framework.

5. The extract ventilation system submitted and approved under application 2019/93868 shall be retained, operated at all times when the commercial kitchen is in use, maintained in accordance with the manufacturer's instructions and retained thereafter.

**Reason:** In the interests of the amenity of nearby occupiers and to accord with Policies LP 51 & LP52 of the Kirklees Local Plan and Government policy in Chapter 15 of the National Planning Policy Framework.

6. The shop shall not be open to customers outside the hours of 9:00 to 17:00 Monday to Sunday (including Bank Holidays).

**Reason:** In the interests of the amenity of nearby occupiers and to accord with Policy LP52 of the Kirklees Local Plan and Government policy in Chapter 15 of the National Planning Policy Framework.

7. The proposed details of the electric vehicle charging points as detailed in Temporary Electrical Solutions Report, dated 26 November 2019, shall be installed and retained thereafter in accordance with those details submitted and approved by the Local Planning Authority under application 2019/93868.

**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 LP20, LP24 and LP47 of the Kirklees Local Plan, Chapters 2, 9 and 15 of the National Planning Policy Framework and the West Yorkshire Low Emission Strategy (WYLES).

8. The approved surfacing and drainage details approved in the plans and information submitted under application 2019/93868, submitted to the Local Planning Authority, shall be installed, and retained thereafter as according to those approved under application 2019/93868.

**Reason:** So as to ensure that a satisfactory layout is achieved in the interest of highway safety and efficiency and so as to ensure that all areas to be used for vehicles and pedestrians are appropriately drained, in accordance with the aim of Policies LP21 and LP22 of the Kirklees Local Plan as well as the aims of Chapter 14 of the National Planning Policy Framework.

Plans and Specifications Table:-

<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Date Received</b>
Location Plan	LP 1	A	06/09/2023 (in relation to application ref 2023/92071)
Supporting statement	SS1	A	19/07/2023 (in relation to application ref 2023/92071)
Local opening times	SS2	A	19/07/2023 (in relation to application ref 2023/92071)
Grouped plans and elevations	16/126/B	C	24/09/2019 (in relation to application ref 2019/93057)
Proposed site / block layout	16/126/2C	C	24/09/2019 (in relation to application ref 2019/93057)
Grouped plans and elevations	16/126/B	A	01/02/2019 (in relation to application ref 2019/90315)

No amended plans were sought or received.