

# 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>2023/70/93514/W</b>
Site Address:	2, Marsden Lane, Marsden, Huddersfield, HD7 6AF
Description:	Variation of condition 2 (opening hours) on previous permission 2020/90523 for change of use of shop to cafe (A3 use), installation of render cladding (white) and formation of raised deck to rear
Recommending Officer:	Tom Hunt

### 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.**

John Holmes

***AUTHORISED OFFICER***

Date: 11-Mar-2024

## Officer Report

### Site Description

2023/93514 – 2, Marsden Lane, Marsden, Huddersfield, HD7 6AF

2 Marsden Lane is a small detached single storey structure. It is currently used as a cafe. It has a shop frontage onto Marsden Lane. Other walls are brick. The roof is hipped and constructed in tiles. To the rear is an enclosed outdoor space.

The surrounding area is residential. To the immediate south are un-associated, prefabricated garages. To the east is the narrow canal.

### Description of Proposal

Variation of condition 2 (opening hours) on previous permission 2020/90523 for change of use of shop to cafe (A3 use), installation of render cladding (white) and formation of raised deck to rear.

It is proposed to vary condition 2 of application 2020/90523 which reads:

*“The hereby approved A3 (café) use hereby approved shall not be open to customers outside the following hours; 0900 to 1800 any day of the week. **Reason:** In the interest of preventing undue noise and disturbance and to protect the residential amenity of the surrounding properties so as to accord with Policies LP24 and LP52 of the Kirklees Local Plan and Chapters 12 and 16 of the National Planning Policy Framework.”*

It is now proposed that the opening times be extended to 09:00-21:00 on Sundays to Fridays and 09:00-22:00 on Saturdays. This is proposed following the grant of the Premises Licence hours (which does not override the attached condition) on the premises.

A Supporting Statement was supplied stating that the venue was operated as a café until transfer of owners in June 2023. Residents were invited to a consultation to discuss with 30 people attending. Existence of the Marsden Band Room and British Legion demonstrate that the area features a number of licensed premises.

### History of negotiations/amendments received

The case officer considered the application on review and advised the agent, following representations, that the proposal could not be supported on the basis of impact upon residential amenity. The agent requested more time to have a response from the applicants to the representations received. A proposed revision of the draft condition to limit the impacts of the hours of operation by a temporary permission was agreed by the agent in order to assess the impacts on residential amenity.

## Relevant Planning History

2020/90523	Change of use of shop to cafe (A3 use), installation of render cladding (white) and formation of raised deck to rear. <i>Conditional Full Permission.</i>
COMP/20/0016	Change of use. <i>Resolved.</i>

A letter from Enforcement was sent following complaints concerning noise and nuisance advising that there could be a breach of planning condition 2 and to apply for a variation of condition to regularise the hours.

## 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: 18/01/2024.

Given the nature of the proposal, while it is close to Grade II Listed Buildings, no other visual impacts would occur to the setting of the Listed Buildings, and it is over 50m to Marsden Conservation Area, so following the Charter guidance, the application did not require advertisement by Site Notice or Press.

10 representations have been received of Support and 15 people submitting 16 representations Objecting; a summary of the comments received is set out below:

### *Support*

- Would support a local business and local employees;
- Noise pollution is minimal, and premises are small having a self-limiting effect;
- Longer hours would provide more flexibility to visit;
- Parking is not a problem locally.

**Officer note:** These matters will be considered in the Residential Amenity and Highway Safety sections of the report. Matters raised in relation to local business and flexibility are noted.

### *Object*

- Noise – In the middle of a residential area, last summer it was very noisy at evenings and weekends with sound carrying to houses and gardens backing onto the canal. This made gardens unusable. Seating outside capacity is 18 which adds to the noise;

- Failure to stick to opening hours;
- Odour – outside area smoking impacts on gardens; smoking occurs at the front of the property;
- Privacy – customers can look into neighbouring gardens from outside the canalside area;
- Nuisance caused to local residents with a licensed premises and had increased since the operation of the business extending its hours;
- Material change of operation from a daytime café to a nighttime bar in a quiet residential road;
- Statement suggests that the British Legion and the Band Room venues are examples of licensed premises in operation, previously they had issues related to noise, anti-social behaviour and alcohol related violence;
- British Legion and the Band Room do not have external seating like no. 2 so this reduces the noise generation/sensitivity of receptors compared to the application site;
- Alternate venues in village centre may be better positioned than a residential area;
- Proposal will encourage Ale Trailers and associated issues with nuisance and noise;
- Previous application 2020/90523 only granted café use with restricted hours to limit impact on residential amenity and highway safety;

**Officer note:** These matters will be considered in the Residential Amenity section of the report.

- Parking – later hours would encourage oversubscribed parking over a longer period of time within a very restricted capacity/bottleneck area for parking;
- Poor safety for pedestrians with lack of pavements and visibility;
- Bin storage – bins are sited outside and are unsightly;

**Officer note:** These matters will be considered in the Highway Safety section of the report.

- Café advertises itself as a café/bar with drinks available throughout the day with food menu limited to certain hours;

**Officer note:** The Town and Country Planning (Use Classes) Order 1987 (as amended) allows cafes to serve food and drink, it does not have restrictions on what degree of food and drink provision should be offered to qualify as a café or a bar. It is noted that the previous application 2020/90523 specifically restricted this use as a bar would not be supported in a residential area however the assessment of the proposal to vary the condition will be set out as follows.

- Lack of real consultation;
- Lack of notice to neighbours

**Officer note:** Whilst consultation can be helpful in suggested alterations to a proposal to make it more acceptable, this is not a pre-requisite for a variation of condition. The application was advertised in accordance with the Council's statutory obligations to publicise via Neighbour Letters which were carried out.

- Could have a detrimental impact on property values;

**Officer note:** It is considered this is a consideration which can be afforded minimal weight in the consideration of this application given the nature of the proposal.

### **Consultation Responses**

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

- Environmental Health – Support with advised condition. Discussed within Residential Amenity section of this report.
- Canal and River Trust – Confirms they have no comment to make.
- KC Crime Prevention – No response received

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

The site is unallocated on the Kirklees Local Plan. It is over 50m from Marsden Conservation Area to its southwest and proximate to Grade II Listed Buildings identified as “10,6,8 MARSDEN LANE” with a Historic England ref: 1217630.

### **Kirklees Local Plan (LP):**

- LP 1 – Presumption in favour of sustainable development
- LP 2 – Place shaping
- LP 21 – Highways and access
- LP 22 – Parking
- LP 24 – Design
- LP 35 – Historic Environment
- LP 51 – Protection and improvement of local air quality
- LP 52 – Protection and improvement of environmental quality

### **Supplementary Planning Guidance and other considerations**

- Highways Design Guide SPD
- Planning (Listed Building & Conservation Areas) Act (1990)

## **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> December 2023, 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 4 – Decision-making
- Chapter 6 – Building a strong, competitive economy
- Chapter 12 – Achieving well-designed places
- Chapter 14 – Meeting the challenge of climate change, flooding and coastal change
- Chapter 16 – Conserving and enhancing the historic environment

## **Assessment**

The following matters are considered in the assessment below –

- 1) Principle of development
- 1) Impact on residential amenity
- 2) Impact on highway safety
- 3) Other matters – e.g. trees/ecology
- 4) Representations
- 5) Conclusion

### 1 – Principle of development:

#### *1.1 Sustainable Development*

Policy LP1 of the Local Plan states that when considering development proposals, the council will take a positive and proactive approach that reflects the presumption in favour of sustainable development contained in the NPPF.

Policy LP2 sets out that all development proposals should seek to build on the strengths, opportunities and help address challenges identified in the Local Plan.

Paragraph 11 concludes that the presumption in favour of sustainable development does not apply where specific policies in the NPPF indicate development should be restricted. This too will be explored.

The site is located near to a Grade II Listed Building. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in considering whether to grant planning permission for development which affects a listed building or its setting, the Local Planning Authority should have

special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

In addition, Policy LP35 of the Local Plan and Chapter 16 of the National Planning Policy Framework regarding the historic environment support the Act.

As discussed previously, the proposal is for a variation of condition concerning opening hours to an existing café, with no additional impact visually, and as such would not harm the significance of the Listed Building. It would be compliant with the aims of LP35 of the Kirklees Local Plan and Chapter 16 of the NPPF. The principle of the use of the site has been established by the original consent.

### 3 – Impact on residential amenity:

Section B and C of Policy LP24 of the Kirklees Local Plan states that proposals which could affect design should:

*“...maintain appropriate distances between buildings’ and ‘...minimise impact on residential amenity of future and neighbouring occupiers.”*

Further to this, Paragraph 135f) of the National Planning Policy Framework 2023 states that planning decisions should ensure that developments have a high standard of amenity for existing and future users.

Paragraph 191 of the NPPF 2023 states that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects of pollution on living conditions. In addition to this, Policy LP52 of the Kirklees Local Plan states that proposals which have the potential to increase pollution from noise, vibration, light, dust, odour and other forms of pollution 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 proposal seeks to extend its hours beyond the previously set between hours of 0900-1800 any day of the week, to open later 09:00-21:00 on Sundays to Fridays and 09:00-22:00 on Saturdays. This would significantly alter operating hours to late evenings.

The area is residential in nature, constrained by narrow highways and a nearby lock. The outside seating capacity is 20 so this potential for noise sources is taken into consideration. Therefore, regard must be given to how any noise from business operations may impact upon the amenity of the occupiers of these residential properties, as well as other activities related to the use, such as the coming and going of customers.

Representations raised concerns over the venue being on the Ale Trail, the Supporting Statement from the applicants confirmed that they are not aiming to be a drinking establishment but to aim for a different market with tapas and sharing boards with beverages (excluding ale and beer). The applicants would actively discourage anybody deemed loud or anti-social.

The Statement raised a potential comparator venue at 1 Peel Street (now Peel Street Social), when they had their balcony approved and were given a 9pm restriction use on the balcony by condition 4 (application ref: 2013/92511). Officers are unable to have this as a true comparator as the application site is located Marsden District Centre within a mixed use area, which includes unrelated residential properties within close proximity. As such, the sensitivity of receptors is altered with associated expectations that the area would have more comings and goings and noise associated with this.

Upon formal consultation, KC Environmental Health Officers recommend that the condition be varied to limit Hours of Use open to customers to be:

**Indoor space**

0900hrs to 2100hrs Sun to Fri  
0900hrs to 2200hrs Sat

**Outdoor space**

0900hrs to 1800hrs Mon to Sun

This is based on the assessment that the extended hours for the indoor use of the building would be acoustically insulated by the building envelope and that the outdoor space could be a sensitive area for the sensitivity of receptors in relation to noise. As part of the assessment by Kirklees Council Environmental Health, the Officer reviews the current locality and reporting of received complaints (if any) to form their assessment. It is noted that the fencing/screening has been installed as per the previous permission (ref: 2020/90523) which would limit in part the impact of noise as far as is practicable.

Nonetheless, negotiations with the agent were agreed to have the condition split and further limited by time to a period of six months to aid Officers in further assessing the impact on noise and nuisance concerns from patrons raised by representations during summertime which are likely to be busy months of operation. The time limited condition would expire after six months to revert back to the previous hours of use of application (ref: 2020/90523).

Should there be a rise in noise and nuisance complaints to Kirklees Council Environmental Health or reports of police involvement, the Council are able to record those Environmental Health issues and consult Kirklees Council's Crime Officer and use their response as an objective assessment for any future extension of hours after the six month trial period lapses.

Odours and loss of privacy were stated within the representations. Officers consider that while smoking odours can be intrusive to sensitive receptors, the limited hours of outside use for a trial period of six months will allow Officers to objectively assess the impacts of the trial period for odour. Nonetheless, regarding the objection on smoking (including vaping) outside the front of the premises, Officers have no reason to believe that the original condition 5 (as below) should be removed and this is to be attached to the permission:

*“There shall be no consumption of drinks and/or the smoking of any substance within the external area to the front of the premises adjacent Marsden Lane.*

*Reason: In the interest of residential amenity, to prevent noise pollution and general disturbance, and in the interest of highway safety through preventing gathering adjacent to the public highway, to comply with the aims and objectives of LP21, LP24 and LP52 of the Kirklees Local Plan and Chapters 12 and 15 of the National Planning Policy Framework.”*

Loss of privacy to residents was described as ‘customers can look into neighbouring gardens from outside the canalside area’, Officers have to consider that pragmatically the adjacent canalside walk would make residential amenity spaces adjacent to this canal more visible to all users including dog walkers, hikers, etc. The temporary extension of hours would not alter this pre-existing impact derived from all users of the canalside walk as such.

A footnote will be included to remind the applicant that Kirklees Council has the 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.

Subject to the agreed condition limiting the time period of operation to six months, the proposal would therefore be in general conformance with LP24b of the Kirklees Local Plan and Chapter 12 of the NPPF.

#### 4 – Impact on highway safety:

Turning to highway safety and parking, policies seek to ensure that new developments have an acceptable impact on highway safety and provide sufficient parking.

Objections were raised concerning impact on parking in an area considered to be oversubscribed and with limited pedestrian footpaths. The Supporting Statement commented that majority of their customers walk to The Little Lock with dog walkers and ramblers as visitors. In addition, the location is eminently walkable with close proximity to the canalside walking trail, Marsden District Centre and the train station reducing car dependency. Whilst the Statement contends that they had not witnessed or had any trouble

parking in the locality, Officers still raise concerns over the potential impact of an overly intensified use. Bearing in mind that the capacity of the café is limited and the locality is attractive to walkers, Officers consider that the time limited use to six month for the extended hours of customer use would allow further objective assessment to be made of the effects on parking within a constrained area for parking should complaints rise.

Regarding the objection on bins outside the front of the premises which could potentially affect highway safety, Officers have attached Condition 4 of the original permission to confirm that the applicants are responsible for the following:

*“4. Other than for collection there shall be no external storage of commercial waste to the front of the property adjacent Marsden Lane. Reason: In the interest of visual amenity, in accordance with LP24 of the Kirklees Local Plan.”*

As such, if Officers receive a complaint regarding this not being fulfilled, then Kirklees Council can use its regulatory powers concerning litter as set out in the attached informative to ensure that this is correctly followed.

Subject to the condition limiting the hours of extended use to a six month period for further assessment for highway safety and the noted location being pedestrian friendly reducing use of vehicles, Officers objectively consider that the impacts of parking could be adequately evaluated. As such this would comply with Policies LP21 and 22 of the Kirklees Local Plan, the KC Highway Design Guide SPD and Chapter 9 of the NPPF

## 5 – Other matters:

### *Climate Change*

When determining planning applications the Council will use the relevant Local Plan policies, the NPPF and guidance documents/SPDs to meet targets to achieve net zero carbon emissions. Due to the limited nature of the variation of condition proposed, it is not considered that specific mitigation measures are required to fulfil those aims.

### *Conditions Review*

As the application is a Section 73 application to vary conditions, it is necessary to re-impose all conditions which remain relevant.

The application form states that the change of use has commenced in 2020 post the decision date 30/09/2020 and were carried out in accordance with plans and specifications. Officers include this condition to confirm that the original permission except whereby specified in its conditions take precedence.

Following agreement by the agent and applicant, condition 2 is revised to reflect the alteration of permitted hours limited to a six month period following the Decision Date.

Conditions 3, 4, and 5 remain unaltered and still relevant to the permission, as such they have been added.

Condition 6 is noted to be in effect as it had been carried out however the condition is applied to ensure that the acoustic fencing/screening is retained while the rear outdoor seating space is in use.

There are no other conditions to discuss.

#### 6 – Representations:

19 representations had been received and considered in the relevant sections.

#### 7 – Conclusion:

The proposal is a Section 73 Variation of Condition application to vary Condition 2 (hours of customer use) to have extended hours. As set out above, in determining a S73, the Local Planning Authority must only consider the 'disputed' condition that is the subject of the application – it is not a complete re-consideration of the application. As such, it is a consideration of Condition 2 only. As detailed within the report, given the time limited period of six months whereby the approved extended opening hours are approved, the variation is considered to be acceptable in order to assess the impacts of those extended opening hours on noise, nuisance and crime.

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. Subject to the condition for the temporary hours of customer use limited to a six month period to objectively assess further impacts, It is considered that the development would constitute sustainable development and is therefore recommended for approval.

**Recommendation**

**Approve**

**Decision Authorisation - Delegated**

**Application Number:** 2023/93514

**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, and

to accord with Policy LP24 of the Kirklees Local Plan and Chapter 12 of the National Planning Policy Framework.

2a. Except for the circumstances referred to in condition 2b, the use hereby permitted shall not be open to customers outside the hours of 0900 to 1800 any day of the week.

**Reason:** In the interests of preventing loss of amenity to adjoining residential properties arising from noise and nuisance disturbance and to accord with the aims of Policy LP16b), LP16c), LP24b) and LP52 of the Kirklees Local Plan and the aims of Chapter 12 of the National Planning Policy Framework.

2b. Notwithstanding the requirements of condition 2a, for a six month trial period from the date of this decision use hereby permitted shall not be open to customers outside the following hours and within the following areas:

Indoor areas:           0900hrs to 2100hrs Sun to Fri,  
                                  0900hrs to 2200hrs Sat

Outdoor areas:        0900hrs to 1800hrs Mon to Sun.

At the end of the six month trial period the hours of use shall be in accordance with those set out within condition 2a.

**Reason:** To allow impacts of the variation in hours to be assessed during this period in the interests of preventing loss of amenity to adjoining residential properties arising from noise disturbance and to accord with the aims of Policy LP16b), LP16c), LP24b) and LP52 of the Kirklees Local Plan and policies within Chapter 12 of the National Planning Policy Framework.

3. All music played at the premises shall be controlled so as to be inaudible inside any neighbouring residential premises and their associated external amenity spaces.

**Reason:** To ensure that the proposed use does not give rise to loss of amenity to nearby residential properties by reason of exposure to excessive noise, and to accord with the aims of Policies LP24 and LP52 of the Kirklees Local Plan and Chapters 12 and 15 of the National Planning Policy Framework.

4. Other than for collection there shall be no external storage of commercial waste to the front of the property adjacent Marsden Lane.

**Reason:** In the interest of visual amenity, in accordance with LP24 of the Kirklees Local Plan.

5. There shall be no consumption of drinks and/or the smoking of any substance within the external area to the front of the premises adjacent Marsden Lane.

**Reason:** In the interest of residential amenity, to prevent noise pollution and general disturbance, and in the interest of highway safety through preventing gathering adjacent to the public highway, to comply with the aims and

objectives of LP21, LP24 and LP52 of the Kirklees Local Plan and Chapters 12 and 15 of the National Planning Policy Framework.

6. The fencing / screening along the site's north elevation as shown on plan ref. 2002-01 adjacent to the rear outdoor seating area shall be retained while the rear outdoor seating is in use.

**Reason:** So as to prevent harmful overlooking of neighbouring land, in the interest of residential amenity, to comply with the aims and objectives of LP24 and LP52 of the Kirklees Local Plan and Chapters 12 and 15 of the National Planning Policy Framework.

**FOOTNOTE:** Kirklees Council has powers under Section 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.

Plans and specifications schedule:-

<b>Plans submitted with 2020/90523</b>			
<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Date Received</b>
Grouped Plans and Elevations	2002 – 01		17/07/2020
Supporting Information	Sequential Test		20/03/2020
Supporting Information	Design and Access Statement		21/02/2020

<b>Plans submitted with 2023/93514</b>			
<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Date Received</b>
Application Form		Original	04/12/2023
Supporting Statement	November 2023	Original	04/12/2023
Supporting Statement	January 2024	Original	21/02/2020

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. The case officer considered the application on review and advised the agent, following representations, that the proposal could not be supported for residential amenity. The agent requested more time to have a response from the applicants to the representations received. A proposed revision of the draft condition to limit the impacts of the hours of operation by a temporary permission was agreed by the agent in order to assess the impacts on residential amenity.

**Report Dated:** 06/03/2024