

**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>2024/70/90479/E</b>  |
| Site Address:         | Garnett Street Garage, Garnett Street, Dewsbury,<br>WF13 4AT  |
| Description:          | Variation of condition 3 (activity hours) on previous<br>permission 2020/92527 for change of use of part of<br>lease vehicle garage (sui generis) to retail (Class E) |
| Recommending Officer: | Edward Cheseldine   |

**DECISION – REFUSED**

**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.**

Emma Thompson

***AUTHORISED OFFICER***

Date: 15-Apr-2024

## **Officer Report**

2024/90479 - Garnett Street Garage, Garnett Street, Dewsbury, WF13 4AT

## **Site Description**

The application relates to a retail unit in Dewsbury which is operating as a Class E food operator selling milkshakes and other confectionary items. The site is located off Halifax Road, in the intersecting Garnett Street which is a narrow road with limited on-street parking considering the dropped curb. The site building adjoins a car garage, notwithstanding the garage, the site is surrounded by residential properties.

## **Application Proposal**

The applicant is seeking permission to vary condition 3 (activity hours) on previous permission 2020/92527 for change of use of part of lease vehicle garage (sui generis) to retail (Class E).

The variation will change the hours of use from 07:00 – 19:00 Monday to Saturday and 11:00 – 17:00 Sundays & Bank Holidays, to 07:00 – 23:00 Monday to Saturday, 11:00- 23:00 Sundays & Bank Holidays.

## **History of Negotiations**

None necessary.

## **Relevant Planning History**

2020/92527 - Change of use of part of lease vehicle garage (sui generis) to retail (Class E)

2020/93821 - Variation of condition 3 (activity hours) on previous permission 2020/92527 for change of use of part of lease vehicle garage (sui generis) to retail (Class E)

## **Public Representations**

The application was advertised by neighbourhood notification letters, which expired on 28 March 2024. Two representations were received, including one received by telephone. Planning related comments are as follows;

- Noise disturbance to the residential properties
- Later openings than what previous planning permission has specified

- Impact from external lighting to residential properties
- Impact to privacy from customers at the food outlet

There were also concerns from a Councillor that later openings would detrimentally impact the amenity of the residents on Garnett Street due to noise disturbance at unsociable hours and impact to parking on the street.

## **Consultation Responses**

KC Environmental Health – A response was received from Environmental Health who comment on noise related issues. They concluded the extension of opening hours would impact residents in the later part of the evening, to the detriment of nearby residential occupiers. They therefore objected to the extension of opening times.

## **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 unallocated on the Kirklees Local Plan Land Allocation Map.

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 21** – Highway safety and accessibility
- **LP 22** - Parking

- **LP 24** – Design
- **LP 52** – Protection and improvement of environmental quality

### **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, 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 and beautiful places

### **Assessment**

Condition 3 (hours of use) limits the hours the food outlet can open, take deliveries, or dispatch food from the premises. It is a limiting condition in order to protect nearby residential occupier from disturbances from noise, light and privacy from the operational business.

Under permission 2020/92527 opening hours were limited as a noise report was not submitted by the planning agent. The initial request for a noise report was to provide existing background and predicted future noise levels at the boundary of 1-3 Garnett Street and 53-55a Halifax Road, a written scheme of how the occupants of the above properties would be protected from noise including noise attenuation measures.

Details of the above were not forthcoming, therefore the hours of opening were limited to 07:00-19:00 Monday-Saturday.

Application 2020/93821 was to extend the initial opening times for Sundays and Bank Holidays between the hours of 11:00-17:00. No further information was submitted for the extension; however, the opening times relate to traditional Sunday opening times.

Under this application, a supporting statement was submitted with the application. However, it does not include any noise surveys or mitigation measures to the surrounding residential properties.

Without any such noise reports or mitigation measures and given there are concerns the increase in hours would result in disturbance from noise to noise sensitive receptors including residential properties relating to late evening opening outside prescribed opening hours, the application would be contrary to LP 24 & LP 52 of the Kirklees Local Plan.

## **Conclusion**

The application for the variation of condition 3 (activity hours), has been assessed against relevant policies in the development plan as listed in the policy section of the report, the Kirklees Local Plan and National Planning Policy Framework and other material considerations. Given the negative impact to amenity of nearby residents, the application is not acceptable.

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 not constitute sustainable development and is therefore recommended for refusal.

**Recommendation**

**Refusal**

## **Decision Authorisation - Delegated Powers**

**Application Number:** 2024/90479

**Officer Recommendation:** Refusal

### **Conditions and Reasons**

#### **Reasons for Refusal**

1. By reason of impact to noise and disturbances to nearby residents, the proposed opening hours would create disturbances at unsociable hours in the later evening which would be to the detriment of residential amenity, with no evidence to the contrary or sound attenuation measures proposed. To permit the proposal would be contrary to Policy LP 24 & LP 52 of the Kirklees Local Plan and advice within Chapter 12 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        | 20819-0          | -              | 19-Feb-2024          |
| Supporting statement | -                | -              | 19-Feb-2024          |

Pursuant to article 35 (2) of the Town and Country Planning (Development Management Procedure) Order 2015 and guidance in the National Planning Policy Framework, the Local Planning Authority has, 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. No amendments were sought or received.