

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:	2024/70/91684/W
Site Address:	Marios Diner, 9, Peel Street, Marsden, Huddersfield, HD7 6BR
Description:	Variation of condition 4 (opening hours) on previous permission 2007/93346 for change of use from A1 to A3 (within a Conservation Area)
Recommending Officer:	John Holmes

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.

Kirsty Nicholls

AUTHORISED OFFICER

Date: 01-Jul-2026

THE SITE & DEVELOPMENT

The site relates to the development which has been the subject of previous approvals, with this application seeking to vary condition 4 of permission 2007/93346 hereafter referred to as the original application/permission.

THE PROPOSED VARIATION OF CONDITION/S

Submitted under Section 73 of the Town and Country Planning Act 1990 (as amended), this application seeks permission to vary condition no.3 of permission 2007/93346 to permit hours of opening from 09:00 to 23:00 Monday to Sunday

Condition no.4, in its entirety, states the following:

The use hereby permitted shall not be open to customers outside the hours of 0830 to 1800 Monday to Saturday and 1200 to 1700 Sundays. Reason: So as not to detract from the amenities of the surrounding properties by reason of noise and odour and to accord with Policies EP1 and EP4 of the Unitary Development Plan.

PLANNING HISTORY

The most relevant planning history for the site relates to the following:-

2007/93346 – Change of use from (hardware shop) A1 to (coffee shop & ice cream parlour) A3 (within a conservation area) – **Conditional Full Permission** 25th September 2007.

Condition 4 of this consent restricted the hours of operation to the following:

The use hereby permitted shall not be open to customers outside the hours of 0830 to 1800 Monday to Saturday and 1200 to 1700 Sundays.

2013/90561 – Variation of condition 4 relating to opening hours on previous permission 2007/93346 for change of use from A1 to A3 (within a Conservation Area) – Variation of condition approved. This permission varied condition no.4 as follows:

4. (a) Except for the circumstances referred to in 4(b), the opening hours of the premises shall be restricted to the hours of 0830 to 1800 Monday to Saturday and 1200 to 1700 Sundays. 4. (b) Notwithstanding the requirements of 4(a), for a twelve month trial period commencing upon the date of this permission, the premises shall be permitted to be

open between the hours of: 0830 to 1800 Monday to Wednesday, 0830 to 2200 Thursday to Saturday and 1200 to 1700 Sunday. At the end of the twelve month trial period, the opening hours in 4(b) shall be discontinued, this condition 4(b) shall expire and condition 4(a) shall thereafter apply in its entirety.

No application was subsequently received and therefore the hours of use permitted by condition 4(a) are those as applicable to the site.

2013/92215 – Discharge of condition 3 on previous permission 2013/90561 for variation of condition 4 relating to opening hours on previous permission 2007/93346 for change of use from A1 to A3 (within a Conservation Area) – **Discharge of Conditions** Refused 9th September 2013

Procedural matter(s)

It is noted that the permission is being sought is to vary a condition upon the oldest consent applicable to the site (2007/93346) rather than the more recent consent. Given both permission 2007/93346 and 2013/90561 appear to have been implemented, and are extant permissions, it is considered that variation of the hours of use condition upon 2007/93346 is a valid approach in this case given that permission remains extant.

Upon both application 2007/93346 and 2013/90561 the following condition is in place:

The use hereby permitted shall not begin until details of the installation and/or erection of any extract ventilation system, have been submitted to and approved in writing by the Local Planning Authority. Details of the methods of treatments or emissions and filters to remove odours and control noise emissions should be included. The works specified in the approved scheme shall be installed prior to the use commencing. Such works shall thereafter be retained and used and maintained in accordance with the manufacturer's instructions.

For both applications 2007/93346 and 2013/90561 this condition is listed as condition no.3. An application to discharge this condition 3 from permission 2013/90561 was received by the Local Planning Authority (LPA) on 10th July 2013. A letter dated 9th September 2013 refused to discharge the condition, stating the following:

Following consultation with the Council's Environmental Services (Pollution & Noise Control) on the information submitted as part of your discharge of condition application, the information submitted is not

considered to be sufficient to satisfy the requirements of condition 3. Whilst it is appreciated that there may be no significant nuisance being caused at this time, it appears that there is a potential for nuisance to be caused to adjacent properties from the installed system. As such, condition 3 cannot be discharged.

There has been no subsequent scheme submitted or discharge of this condition. Similarly, there is no record of condition 3 of application 2007/93346 having being discharged. In the circumstances it is considered that the site has operated in breach of condition 3 of permission 2007/93376 and therefore no enforcement action may be taken.

This is having cognisance of section 171 of the Town and Country Planning Act 1990 (as amended) which specifies such that no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach. In this case, at the time the application was submitted, taking account of the planning history, it is considered the extant permission had been in breach of condition no.3 for in excess of 10 years. Review of Council records demonstrate no enforcement notice / breach of condition notice has been served by the LPA in respect of the breach.

Notwithstanding the above, this application is only able to consider the variation of condition no.4 of application 2007/93346. There is, however, an assessment of the scheme in its entirety in relation to the conditions of approval undertaken within the 'Assessment' section of this report.

It should be noted that the original permission granted consent for an A3 use. Since 2007 the Town and Country Planning (Use Classes) Order 1987 (as amended) has been updated. Use class A3 has since become Class E(b) which is for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises.

REPRESENTATIONS

Publication of the application has been undertaken in accordance with the Council's Development Management Charter as in force at the time of the applications receipt (13th June 2024)

The application has been publicised by neighbour notification letters

[Note – The word 'letter' below should be taken to include hand-written letters, emails and online representations.]

Letters of Objection

4 Letters of objection have been received, raising the following summarised concerns:

- Impact upon the amenity of neighbouring occupiers as a result of noise and odour
- Use appears to be that of a hot food takeaway
- Financial implications to not have a later hours of use should have been investigated prior to obtaining lease for the building
- This is an area where there are private flats that could be and most probably be disturbed by noise in the evenings disturbing the private lives and choices of quiet evenings.
- When purchasing the property, the hours of use of neighbours would have been looked into / known.
- It will effect the living conditions of the person living above the shop next door
- Impact upon health and wellbeing of neighbouring occupiers

Letters of comment

5 Letters of comment have been received, raising the following summarised points:

- Does not make sense the business is not able to operate later hours
- Use during 6 – 9pm period will allow users following finishing work
- Should be able to open past 6 to whatever hours considered best
- Hours should be permitted in line with neighbouring premises
- Users of the site are unlikely to engage in anti-social behaviour

Letters of Support

276 letters of support have been received, including from the local ward Councillors (incumbent members at the time of writing – 31st July 2024), raising the following summarised points:

- Similar premises in the locality which is characterised by commercial uses
- Use is a family friendly premises
- Unique offer from the business
- Nearby public house comparable / similar impact
- Beneficial impact of diversified commercial uses in the centre
- Evening use of the restaurant is a positive approach

- Enhanced dining options, vibrancy to the centre, convenience for users and promotes tourism
- Other restaurants on the same street do not have similar restrictions
- Owners are responsible and respected
- Have not been a problem in their current operations
- Support for businesses should be provided by the Council
- Does not seem to be a fair reason to restrict given operations of other premises in the vicinity
- Current situation is overly restrictive
- Planning should not be a barrier to successful businesses being able to operate
- Increase opportunity for local users / employment to utilise the site

CONSULTATIONS

The following consultations have been undertaken for this application with the summarised responses listed below.

KC Highways Development Management (DM) – No objection

Within their response KC Highways DM set out that the site is located within the centre of Marsden and there are no highway implications resulting from the change in opening hours.

KC Environmental Health – No objection

Within their response dated 15th July 2024 the Environmental Health Team state that they have concerns about the transmission of noise from the operational use and any fixed mechanical plant affecting the amenity of the neighbouring residential properties. They go on to advise that the proposed use into a more sensitive time period is a concern and no evidence has been submitted to show there will be no loss of amenity.

Within their initial response they also note the outcome of a licencing committee which restricted the hours to 10:00 – 18:00 daily and that condition 4 of permission 2013/90561 was never discharged.

The applicant subsequently submitted a noise survey, on 2nd June 2026, the reason for the lengthy period of time between the 15th July 2024 response of the Environmental Health Team, and the submission of the noise survey was due to a fire at the premises which saw internal repairs required to be undertaken.

Following review of the submitted noise survey the Environmental Health Team provided their further response in regard to this application on 14th June 2026. Within their response they detail that the site has residential properties on either side, and what appears to be a residential property above. They make reference to the initially submitted planning statement which details the site is an established restaurant. They go on to state they have reviewed the Noise Impact Assessment Report Ref: NIA-12630-26-12886-v1, dated 29th May 2026, prepared by Environmental Noise Solutions Ltd (ENS) that has been submitted as part of the applicaiton.

The submitted Noise Impact Assessment Report Ref: NIA-12630-26-12886-v1 has undertaken a baseline environmental noise survey and measured noise from the operating kitchen extraction fan at the premises and used this data to assess noise impacts. A BS4142:2019 assessment confirms that “plant noise was found to operate at a very low level and was largely masked by the residual noise which is driven by flowing water noise from the River Colne”.

A further assessment of the sound insulation between the premises and the neighbouring residential premises confirmed that “The airborne sound insulation of the existing separating wall is 65 dB DnT,w +Ctr, which is considered to be relatively high”. The Noise Impact Assessment Report Ref: NIA-12630-26-12886-v1 concluded that: “Noise from the site is not considered to restrict the proposed operating hours of the business”.

KC Environmental Health confirm within their 14th June 2026 response that the submitted Noise Impact Assessment Report Ref: NIA12630-26-12886-v1 is acceptable and that noise levels from the current ventilation extraction system are acceptable. They go on to conclude that the submitted Noise Impact Assessment Report Ref: NIA-12630-26-12886-v1 confirms that noise from the current ventilation extraction system is acceptable, and we therefore have no objection to the extension of operating hours.

The responses of the above consultees are discussed in greater length within the ‘Assessment’ section of this report.

ALLOCATION AND POLICIES

Since the determination of the original permission (2007/93346) there has been a change in national and local planning policies applicable to the determination of this case. Having regard to the reason for condition no.4 this application is assessed on the basis of the following:

The application site is within the Marsden Town Centre and Conservation Area allocations as detailed within the Kirklees Local Plan and also falls within an area with a known presence of bats and twite birds.

The following policies of the Kirklees Local Plan are considered relevant to the consideration of this application.

- LP24 Design
- LP52 Protection and Improvement of Environmental Quality

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 20th July 2024, the Planning Practice Guidance Suite (PPGS) first launched 6th March 2014 together with Circulars, Ministerial Statements and associated technical guidance.

A consultation draft of the National Planning Policy Framework (the Framework) was published on 16 December 2025. As a consultation, the document is at an early stage and subject to change. Accordingly, for the purposes of this application, no weight is given to the current consultation document.

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

- Chapter12 Achieving well-designed places
- Chapter15 Conserving and enhancing the natural environment

Insofar as they are relevant to the consideration of this application the following Assessment makes reference to the applicable policy / legislation.

ASSESSMENT

This Section 73 application seeks minor material variations to the hours of operation.

It is considered that the key determining issue/s in the consideration of this application are:

- Residential amenity

Policy LP24 of the Kirklees Local Plan and policies within Chapter 12 of the National Planning Policy Framework seeks to ensure development has an acceptable impact upon the amenity of neighbouring occupiers

Policy LP52 is considered to be of relevance and sets out that development must be considered in relation to potential for increases from pollution, in this case the relevant possible increases could relate to noise, light & odour emissions.

Paragraph 198 of the NPPF, contained within Chapter 15, sets out that proposals should mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life. This is echoed within Kirklees Local Plan Policy LP24 which states that: -

‘Proposals should provide a high standard of amenity for future and neighbouring occupiers, including maintaining appropriate distances between buildings and the creation of development-free buffer zones between housing and employment uses incorporating means of screening where necessary’.

Whilst reference is made in relation to odour within the reason for the condition, it is noted that the reason for the hours of use condition upon permission 2013/90561 is ‘in order to protect the amenities of nearby residents from noise and disturbance at unsocial hours’. Whilst reference is made to odour in the reason upon 2007/93346 it is a reason shared by both conditions 3 and 4. Given condition 3 required submission of a ventilation scheme and methods in relation to emissions and filters to remove odours, it is considered reasonable that the LPA considers the proposed alternative hours of use being sought on the basis of resultant noise impact.

The response of Environmental Health is noted and is afforded weight in the consideration of this application. The submitted noise assessment considered there to be No Observed Adverse Effect Level (NOAEL) and goes on to conclude that, as such, noise from the site is not considered to restrict the proposed operating hours of the business.

The representations received, including from former ward members, are noted and afforded weight in the determination of this application. Similarly, the concerns raised in representations in objection to the scheme are afforded weight.

The use of the premises for a commercial purpose contributes to the wider town centre use(s) which are undertaken in the locality. There is inevitably a balance therefore which needs to be taken in relation to the commercial operations and subsequent economic benefits which arise, and the residential amenity of neighbouring occupiers.

In this case, in relation to noise, the Environmental Health Team have stated they do not object to the proposed additional hours of use and the operation of the site being extended to 09:00 to 23:00 Monday to Sunday.

Taking account of all third party representations, the information submitted as part of the noise survey and the consultee response of the Council's Environmental Health Team in light of the submitted noise survey, it is concluded that the additional hours as proposed would not have a significant impact on the amenity of neighbouring occupiers to such a degree that refusal can be substantiated in this case.

It is therefore recommended that condition no.4 be re worded to permit the additional hours to 23:00 Monday – Sunday.

Review of conditions

In the instance of any grant of approval of a S73 application, a new consent is issued by the LPA, as such all conditions upon the original permission are required to be reviewed and where necessary re applied or amended.

In this case the proposal relates to an extant permission, and therefore it is considered condition no.1 (time limit for implementation) is no longer applicable.

Condition no.2 relates to a requirement to undertake the development in accordance with the submitted plans. This condition is recommended to remain as worded and the plans list table of the decision updated to reflect that which has been submitted as part of the original consent and this application.

Condition no.3 required that the use shall not begin until details of the installation and/or erection of any extract ventilation system have been submitted to and approved in writing by the Local Planning Authority. This condition does not appear to have been discharged. It is noted that the 2013 permission (ref: 2013/90561) was also subject to this condition and that the condition was never discharged upon that consent either.

No enforcement notice has been served in relation to this site.

It is not clear if the 2013 permission was ever implemented, however it appears on the balance of probabilities the 2007 permission was. The 2007 permission has therefore been undertaken in breach of condition 3 for 19 years.

Section 171B of the Town and Country Planning Act sets out that 'Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of ten years beginning with the date on which the operations were substantially completed' As such the consent implemented by virtue of application 2007/93346 became immune from enforcement action at some point between 2017 and 2020.

It is considered it would be unreasonable of the LPA to re-impose the condition. Whilst a S73 application does issue a new permission, weight is afforded to the circumstances for such an application being submitted and considered. In this case noise matters have been satisfactorily considered and addressed. To re-impose a condition relating to odour is not considered to be a reasonable approach in this case given the length of time the lawful operations of the site have been able to be undertaken in this case.

Therefore, condition no.3 would not be re imposed upon any grant of permission in this case.

Representations

The representations received are copied below for completeness and addressed as follows:

Letters of Objection

- Impact upon the amenity of neighbouring occupiers as a result of noise and odour
- This is an area where there are private flats who could be and most probably be disturbed by noise in the evenings disturbing the private lives and choices of quiet evenings.
- When purchasing property hours of use of neighbours would have been looked into / known.
- It will effect the living conditions of the person living above the shop next door
- Impact upon health and wellbeing of neighbouring occupiers

Officer Comment: *The impact of the proposal upon the residential amenity of neighbouring occupiers has been addressed, in light of the planning history, within the 'Assessment' section of this report.*

- Financial implications to not have a later hours of use should have been investigated prior to obtaining lease for the building

- Use appears to be that of a hot food takeaway

Officer Comment: *The use of the site is that falling within use class E(b) of the Town and Country Planning (Use Classes) Order 1987 (as amended) and cannot be revisited as part of this application seeking to change the hours of use of the permitted use.*

Officer Comment: *It is considered limited weight can be afforded to whether any investigations by the applicant prior to obtaining a lease for the premises was undertaken.*

Letters of comment

5 Letters of comment have been received, raising the following summarised points:

- Does not make sense the business is not able to operate later hours
- Use during 6 – 9pm period will allow users following finishing work
- Should be able to open past 6 to whatever hours considered best
- Hours should be permitted in line with neighbouring premises
- Users of the site are unlikely to engage in anti-social behaviour

Officer Comment: *These comments are noted and taken into account within the assessment of this application.*

Letters of Support

276 letters of support have been received, including from the local ward councillors (incumbent members at the time of writing – 31st July 2024) these raise the following points in support of the proposed development:

- Similar premises in the locality which is characterised by commercial uses
- Use is a family friendly premises
- Unique offer from the business
- Nearby public house comparable / similar impact
- Beneficial impact of diversified commercial uses in the centre
- Evening use of the restaurant is a positive approach
- Enhanced dining options, vibrancy to the centre, convenience for users and promotes tourism
- Other restaurants on the same street do not have similar restrictions
- Owners are responsible and respected
- Have not been a problem in their current operations
- Support for businesses should be provided by the Council

- Does not seem to be a fair reason to restrict given operations of other premises in the vicinity
- Current situation is overly restrictive
- Planning should not be a barrier to successful businesses being able to operate
- Increase opportunity for local users / employment to utilise the site

Officer Comment: *These points are noted and weighed into the balance / taken into account within the assessment of this application.*

CONCLUSION & RECOMMENDATION

There has been no significant change to the site allocation or national/local planning policy and guidance since grant of permission for the original permission.

It is therefore considered that, subject to the wording of conditions being amended, where relevant, to the wording set out in the 'Review of Conditions' section of this report the proposed varied hours of use the subject of this Section 73 application are acceptable and do not alter the conclusions reached and the recommendation made for original application.

Approval is therefore recommended.

Recommendation - VARIATION OF CONDITION/S APPROVED

Decision Authorisation - Delegated Powers

Application Number: 2024/91684

Officer Recommendation: Variation of Condition Approved

Conditions

1. The development hereby permitted shall be carried out in complete accordance with the approved plans and specifications except as may be required by other conditions.

Reason: So as to ensure the satisfactory appearance of the development on completion and to accord with policy LP24 of the Kirklees Local Plan and Policies within Chapter 12 of the National Planning Policy Framework.

1. The use hereby permitted shall not be open to customers outside the hours of 08:30 – 23:00 Monday to Sunday.

Reason: In the interests of the amenity of neighbouring occupiers to accord with policies LP24 and LP52 of the Kirklees Local Plan and policies within Chapters 12 and 15 of the National Planning Policy Framework.

Plans and specifications schedule:-

Plan Type submitted as part of application 2007/93346	Reference	Date Received
Location Plan at scale 1:1250	-	6 th August 2007
Site Plan at scale 1:500	-	6 th August 2007
Plan Type submitted as part of application 2007/93346	-	
Floor Plan – Ground Floor	-	13 th June 2024
Floor Plan – First Floor	-	13 th June 2024
Supporting Statement	-	13 th June 2024
Noise Assessment	NIA-12630-26-12886-v1 Peel Street, Marsden	2 nd June 2026

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 in relation to noise has been submitted as part of additional information required to enable the LPA to determine this application.

