

**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:	2024/70/92155/W
Site Address:	Petrol Filling Station, Morrisons, Penny Lane, Waterloo, Huddersfield, HD5 8QW
Description:	Variation of condition 8 (opening hours) of previous permission 2017/90666 for variation condition 24 (petrol station opening hours) of previous permission (94/61/91519/W3) for erection of supermarket, petrol filling station with car wash, associated car parking and access road
Recommending Officer:	Laura Yeadon

DECISION – Variation of Conditions – Granted

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.

Victor Grayson

AUTHORISED OFFICER

Date: 22/10/2024

Officer Report

[Website](#)

Site Description

The petrol station at Morrisons, Waterloo, Huddersfield forms part of the Morrisons site within an area defined as the Strategic Green Infrastructure Network within the Kirklees Local Plan.

The supermarket itself is located within the southern corner of the site with car parking to the north and west. Within the northwest corner of the site is the petrol filling station which this application relates to.

Description of Proposal

The application is to vary condition 8 of previous permission 2017/90666 for the variation of condition 24 of previous permission 1994/91519 for the erection of supermarket, petrol filling station with car wash, associated car parking and access road.

Condition 24 of permission 1994/91519 stated the following:

“The petrol filling station shall not open outside the hours of 08.00 to 22.00 Monday to Friday, 08.00 to 21.00 on Saturdays and 10.00 to 17.00 on Sundays, unless otherwise agreed in writing by the Local Planning Authority.”

The reason for the imposition of the condition was:

“To safeguard the amenities of nearby residents.”

These hours of opening were varied under application 1995/90477 to:

“The petrol filling station shall not be open outside the hours of 0700 to 2200 Monday to Saturday and 0900 to 1700 hours on Sundays”

These opening hours were varied further under application 2017/90666 as follows:

8. Except for the circumstances referred to in condition 9, the petrol filling station shall not be open outside the hours of 0700 to 2200 Monday to Saturday and 0900 to 1700 hours on Sundays.

Reason: *In order to protect the amenities of nearby residents from noise and disturbance at unsocial hours and in order to accord with Policies BE1 and EP4 of the Unitary Development Plan and core planning policies, Chapter 11 of the National Planning Policy Framework*

9. Notwithstanding the requirements of condition 8 for a twelve month trial period, commencing upon the date of this permission, the petrol filling station shall not be operational outside the hours of 0600 and 2300 hours Monday to

Saturday and 0800 to 2000 hours on Sundays with the exception of two pumps being available 24 hrs by 'pay at pump' facility only. At the end of the twelve month trial period condition 9 shall expire and condition 8 shall thereafter apply in its entirety.

Reason: *In order for the Local Planning Authority to assess whether the sale of petrol within the hours specified in this condition can be undertaken without detriment to the amenities of nearby residents arising from noise and disturbance taking into account Policies BE1 and EP4 of the Unitary Development Plan and core planning policies, Chapter 11 of the National Planning Policy Framework.*

As part of this current application, it is proposed to vary condition 8 of the previous permission to:

"Except for the circumstances referred to in condition 9, the petrol filling station shall not be open outside the hours of 0530 to 2300 daily."

History of negotiations/amendments received

No negotiations have taken place with the applicant/agent due to the application being acceptable in its submitted format.

Relevant Planning History

- 1990/07011 Outline application for Class 'A' retail development to include superstore with associated petrol filling station, car wash, car parking.
Conditional Outline Permission
- 1993/04443 Outline application for the erection of Class A1 retail foodstore, petrol filling station and car wash with car park and new access road.
Conditional Outline Permission
- 1994/91519 Erection of supermarket, petrol filling station with car wash, associated car parking and access road.
Approval of Reserved Matters
- 1995/9002 Erection of various illuminated signs to supermarket and petrol filling station.
Advertisement Consent Granted
- 1995/90477 Variation of Condition 24 relating to hours of opening on previous permission (94/61/91519/W3) for erection of supermarket. Petrol filling station with car wash associated car parking and access road.
Conditional Full Permission
- 1995/91379 Variation of Condition 22 relating to noise levels on previous permissions 93/60/04443 and 94/61/91519 for erection of

supermarket petrol filling station with car wash, associated car parking and access road.
Conditional Full Permission

2004/92869 Erection of extension to form produce pod and reposition existing 4 no. parent and toddler parking bays.
Conditional Full Permission

2016/91238 Installation of illuminated and non-illuminated signs.
Advertisement Consent Granted

2017/90666 Variation of condition 24 (petrol station opening hours) on previous permission (94/61/91519/W3) for erection of supermarket, petrol filling station with car wash associated car parking and access road.
Conditional Full Permission

2018/91233 Installation of new retail unit.
Conditional Full Permission

2018/93078 Erection of (A1/A3) drive thru' coffee shop with car parking, drive thru' lane, hard and soft landscaping, refuse area, and associated works.
Conditional Full Permission

2019/92494 Discharge of Condition 4 (noise) on permissions permission 2018/93078 for erection of (A1/A3) drive thru' coffee shop with car parking, drive thru' lane, hard and soft landscaping, refuse area, and associated works.
Approved

2023/91690 Erection of car windscreen repair facility (Use Class Sui Generis).
Section 106 Full Permission

2023/91691 Advertisement Consent for signage related to a car windscreen repair facility.
Advertisement Consent Granted

Representations

The council is currently undertaking the legal statutory publicity requirements, as set out at Table 1 in the Kirklees Development Management Charter. As such, the council has publicised this application via neighbour notification letters, site notice and newspaper advertisement.

Final publicity date expired 14/09/2024 – no representations received.

Kirkburton Parish Council – no comments received.

Consultation Responses

K.C. Highways Development Management – no objection.

K.C. Environmental Health – no objection subject to a condition to ensure the operation is in accordance with the measures specified within the submitted Noise Assessment.

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 27/02/2019).

The site is without notation on the Kirklees Local Plan however it is located within the Strategic Green Infrastructure Network, an area which is at 'low risk' from former coal mining activity, and a 'bat alert' area.

Kirklees Local Plan:

- **LP 1**– Achieving sustainable development
- **LP 2** – Place shaping
- **LP 21** – Highways and access
- **LP 22** – Parking
- **LP 31** – Strategic Green Infrastructure Network
- **LP 30** – Biodiversity
- **LP 33** – Trees
- **LP 35** – Historic environment
- **LP 51** – Protection and improvement of local air quality
- **LP 52** – Protection and improvement of environmental quality
- **LP 53** – 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 20/12/2023, the Planning Practice Guidance Suite (PPGS) first launched 06/03/2014 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 9 – Promoting sustainable transport
- Chapter 12 – Achieving well-designed and beautiful places

- Chapter 14 – Meeting the challenge of climate change, flooding and coastal change
- Chapter 15 – Conserving and enhancing the natural environment

Assessment

The following matters are considered in the assessment below –

- 1) Principle of development
- 2) Impact on amenity
- 3) Impact on highway safety
- 4) Other matters
- 5) Representations
- 6) Conclusion

1 – Principle of development:

The site is without notation on the Kirklees Local Plan. Policy LP1 states that when considering development proposals, the council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework. LP1 goes on further, stating that:

“The Council will always work pro-actively with applicants jointly to find solutions which mean that the proposal can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area”.

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

The principle of a petrol filling station at this site was established under its original application, reference 1994/91519. The hours of operation for the petrol station have historically been varied under applications 1995/90477 and 2017/90666 with the latter application being for a temporary 12-month period of time to allow officers to assess whether the increase in opening hours were detrimental to the amenity of neighbouring properties.

Since the previous permission was granted, planning policy has been updated with the updated National Planning Policy Framework and the adopted Kirklees Local Plan.

The proposed variation of the opening hours does not impact on the principle of development.

2 – Impact on amenity:

Policy LP24 of Kirklees Local Plan and Chapter 12 of the NPPF set out that development should be of an acceptable design. These policies also seek to

ensure development has an acceptable impact upon the amenity of neighbouring occupiers.

In this case the application seeks to vary the previously-approved opening hours for the petrol filling station only. It is proposed that the opening hours will be operational between 0530 to 2300 daily.

The reason for varying the operational hours is as follows:

The additional opening hours are for the benefit of people working outside the current opening hours; healthcare workers, delivery drivers, agricultural workers, service industry employees. All would gain from an accessible forecourt located approximately 50m from the nearest residential property.

A Noise Assessment authored by Infinity Acoustics under reference A175MF has been submitted to accompany the application. KC Environmental Health were formally consulted as part of this application and cite that the assessment considers the noise from vehicular movements, petrol pumps, tannoy systems, noise from car radios, tyre pumps and car door slams.

Officers have stated that a noise survey of the site was undertaken between Friday 19/07/2024 to Monday 22/07/2024 from a single measurement position as shown in figure 4 and a summary of the findings is given in table 5. A BS4142 assessment has been conducted and after applying a total of +8dB corrections for tonality, intermittency and impulsivity, table 7 shows a low impact. The findings of the report are accepted.

Under section 4 of the Assessment, control measures are identified and include the following:

- The filling station should not operate outside of 0530hrs to 2300hrs daily. Should the petrol station need to operate outside of these hours then further assessment may be required
- The tannoy speaker system should not be utilised in the nighttime hours between 0530hrs to 0700hrs.
- The fuel delivery time periods should remain the same and should not occur within the proposed extended hours of operation.
- Any car valeting and/or hoovering facilities and car washing should only be used within the existing permitted hours of operation.

Subject to the imposition of a condition ensuring that these measures are incorporated into the operation of the petrol station, KC Environmental Health raise no objections to the proposals.

Therefore, in terms of the impact of the extended hours on the amenity of neighbouring occupiers, the proposals are considered acceptable, and are in accordance with Policies LP24 and LP52 of the Kirklees Local Plan and Chapters 12 and 15 of the National Planning Policy Framework.

3 – Impact on highway safety:

In terms of highway safety, the infrastructure for vehicles to access and egress from the petrol filling station is in situ with the development fully operational.

The proposed changes would allow the petrol filling station to open 1 hour 30 mins earlier than the morning and open 1 hour later in the evening Monday to Saturday and 3 hours 30 mins earlier and 6 hours later on Sundays.

Due to the nature of the works, KC Highways Development Management were formally consulted regarding the proposed works, and have commented that the proposed extended opening hours would have no material impact on the operation of the petrol filling station or local highway network and raise no objection to the proposed variation to the operating hours.

Whilst no additional conditions are recommended, it has been requested that conditions 2, 3, 4 and 5 are still appropriate and should be attached to any new permission.

It is therefore concluded that the application would not result in any further harm to highway safety of parking provision in accordance with Policies LP21 and LP22 of the Kirklees Local Plan and advice within the NPPF.

4 – Other matters:

Climate Change

On 12/11/2019, 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.

Due to the limited nature of the development proposed, it is not considered that specific climate change mitigation measures are required to make this development acceptable in planning terms.

Biodiversity

Paragraphs 180, 186, 187 and 188 of Chapter 15 of the National Planning Policy Framework are relevant, together with The Conservation of Habitats and Species Regulations 2017 which protect, by law, the habitat and animals of certain species including newts, bats and badgers.

Policy LP30 of the Kirklees Local Plan requires that proposals protect Habitats and Species of Principal Importance.

Principle 12 of the Kirklees House Extensions and Alterations SPD states that extensions and alterations should consider how they might contribute towards the enhancement of the natural environment and biodiversity.

The application site is within a 'Bat Alert' layer on the council's GIS system. Whilst formal comments have not been requested from KC Ecology it is considered that a Bat Survey was not required in this instance. This is due to the nature of the application being to vary the opening hours, and given that no physical development is proposed.

Strategic Green Infrastructure Network

The site is within the Strategic Green Infrastructure Network and therefore Local Plan Policy LP31 is of relevance in this instance. The role of the network is to safeguard and enhance green infrastructure networks, green infrastructure assets and the range of functions they provide. As the proposals are for changes to the opening hours, it is not considered that they would be detrimental to the aims of Policy LP31 of the Local Plan.

Coal legacy

The site is located within the Coal Authority's "Development Low Risk Area". There is no statutory requirement to consult the Coal Authority regarding development within the "Development Low Risk Area", and an informative note can instead be appended to the decision notice which constitutes the deemed consultation response. The application site falls within an area at low risk of ground movement as a result of past mining activities as determined by the Coal Authority. As such it is considered that it is unnecessary in this case to require a survey of land stability to be carried out with regard to previous mining activity which may have taken place within the locality. It is recommended that the Coal Authority's standing advice is provided with any grant of approval. As such it is considered that the proposal is acceptable with regard to ground stability in accordance with the National Planning Policy Framework.

Previous conditions

Nine conditions were imposed as part of the previous application to vary the hours, and these need to be assessed as to whether they are still pertinent to impose. Of note:

Condition 1 – trees – this is a "lifetime" condition and therefore needs to be reimposed with updated policies.

Condition 2 – access – this is a "lifetime" condition and therefore needs to be reimposed with updated policies.

Condition 3 – areas used by vehicles – this is a “lifetime” condition and therefore needs to be reimposed with updated policies.

Condition 4 – sightlines – this is a “lifetime” condition and therefore needs to be reimposed with updated policies.

Condition 5 – surface water – this is a “lifetime” condition and therefore needs to be reimposed with updated policies.

Condition 6 – sewers – this is a “lifetime” condition and therefore needs to be reimposed with updated policies.

Condition 7 – noise levels – these were varied from the original permission under application number 95/91379 and will need to be re-imposed in line with the variation agreed and with updated policies.

Condition 8 – opening hours – this is the subject of this application and the condition shall be re-worded accordingly and with updated policies.

Condition 9 – temporary condition – this does not need to be reimposed.

Additional condition

As assessed above, a Noise Assessment was submitted with the application to vary the opening hours. To ensure that the recommended mitigation measures are implemented, it is considered reasonable and necessary to add a condition in relation to this.

5 – Representations:

None

6 – Conclusion:

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. It is considered that the development would constitute sustainable development and is therefore recommended for approval.

Recommendation: APPROVE

Decision Authorisation: Delegated Powers

Application Number: 2024/92155

Conditions:

1) No trees within or on the boundary of the site shall be felled, topped or lopped except with the prior written approved of the Local Planning Authority.

Reason: In the interest of visual amenity and to accord with Policies LP1 and LP33 of the Kirklees Local Plan and advice within the National Planning Policy Framework.

2) No access other than that shown on the approved plan shall be formed into the site without the prior written approval of the Local Planning Authority.

Reason: In the interests of the free and safe use of the highway in accordance with Policies LP21 and LP22 of the Kirklees Local Plan and advice within the National Planning Policy Framework.

3) The development shall be retained in accordance with details previously agreed with regards to the areas to be used by vehicles including parking, loading and unloading areas being surfaced, sealed and drained.

Reason: In the interests of the free and safe use of the highway in accordance with Policies LP21 and LP22 of the Kirklees Local Plan and advice within the National Planning Policy Framework.

4) The access agreed on the approved plan shall be provided and the sight lines shown kept clear from all obstructions to visibility exceeding 1 metre in height above the adjacent carriageway and retained as such.

Reason: In the interests of the free and safe use of the highway in accordance with Policies LP21 and LP22 of the Kirklees Local Plan and advice within the National Planning Policy Framework.

5) Surface water from all areas to be used by vehicles shall be discharged to Fenay Beck via suitable oil/grit or storm pass interceptors.

Reason: In the interests of the satisfactory drainage of the site in accordance with advice within the National Planning Policy Framework.

6) No building shall be erected closer to a sewer than 3m provided that a 6m maintenance strip is provided.

Reason: In the interests of the satisfactory drainage of the site in accordance with advice within the National Planning Policy Framework.

7) The level of noise omitted from the site shall not exceed 55 dB expressed as a 15 minute LAeq between 05:30 and 2300 hours and 45 dB expressed as a 15 minute LAeq at any other time as measures 4 metres from the nearest residential façade at a height of 1.5 metres above ground level.

Reason: To safeguard the amenities of nearby residents in accordance with Policies LP1 and LP52 of the Kirklees Local Plan and advice within the National Planning Policy Framework.

8) The petrol filling station shall not be open outside the hours of 05:30 to 23:00 daily.

Reason: In order to protect the amenities of nearby residents from noise and disturbance at unsocial hours and in order to accord with Policies LP24 and LP52 of the Kirklees Local Plan and advice within the National Planning Policy Framework.

9) The development hereby approved shall be operated in accordance with the measures specified within the Noise Assessment authored by Infinity Acoustics Ref A175MF.

Reason: To ensure the proposed development does not cause harmful noise pollution within neighbouring noise sensitive locations, in the interest of amenity, to comply with the aims and objectives of Policies LP24 and LP52 of the Kirklees Local Plan and Chapters 12 and 15 of the National Planning Policy Framework.

This permission relates to the plans approved under the original permission 1994.91519 and the submitted Noise Assessment under this current application. These are namely:

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
3152 – P3			16/05/1994
3152 – E3			15/08/1994
3152 – GA3E			08/08/1994
3152 – 21C			08/08/1994
3152 – P6			16/05/1994
3152 – P7			16/05/1994
3152 - P4			16/05/1994
3152 – P5			16/05/1994
93763 – 702A			16/05/1994
93763 – 703			16/05/1994
93763 – 704			16/05/1994
Noise Assessment	Infinity Acoustics – Ref: A175MF		31/07/2024

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 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. No negotiations were undertaken with the applicant due to the application being acceptable in its submitted format.

Report Dated: 21/10/2024

Coal – low