

**KIRKLEES METROPOLITAN COUNCIL
INVESTMENT & REGENERATION SERVICE**

DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended) – SECTION 70

DELEGATED DECISION TO DETERMINE PLANNING APPLICATIONS

Reference No:	2024/62/93287/E
Site Address:	Greengates House, 123, Chickenley Lane, Chickenley, Dewsbury, WF12 8QS
Description:	Use of premises for online dessert shop
Recommending Officer:	Nicole Helliwell

DECISION - REFUSE

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.

Sarah Longbottom

AUTHORISED OFFICER

Date: 17 February 2025

Officer Report

Reference no. 2024/62/93287/E

Site Address: Greengates House, 123, Chickenley Lane, Chickenley, Dewsbury, WF12 8QS

Proposal: Use of premises for online dessert shop

Site Description

The application relates to Catholic Church of St Thomas More which situated within the grounds of Greengates House in Chickenley, Dewsbury. The surrounding area comprises residential and commercial properties of varying materials and architectural styles. The site is not within a conservation area, nor are there any listed buildings or public right of ways within close proximity.

Description of Proposal

The application seeks retrospective planning permission to change the use of the premises from a place of worship (Class f1(f)) to an online dessert shop (Sui Generis). The details of the proposal are summarised below:

- The proposal would include no external alterations to the original building.
- The dessert shop would open Monday-Thursday 5pm to 12am, Friday-Saturday 5pm to 1am & Sundays 5pm to 1am.

History of negotiations/amendments received

No amendments were sought or received during the course of the application.

Relevant Planning History

- **2024/93042:** Erection of fence. [Planning application details | Kirklees Council](#) – Refused
- **2022/90815:** Work to TPO trees. [Planning application details | Kirklees Council](#) – Part Granted/Part Refused

Enforcement

- **COMP/23/0453** – Alleged unauthorised material change of use to takeaway

Representations

The application was advertised by neighbour letters, which expired on 13th February 2025. As a result of the above publicity, one representation has been received which is a general comment. This queries why, if still under consideration has the development has already started, in a building site with no permanent roof.

Parish/Town Council Comments

Not Applicable.

Local Ward Members

Not Applicable.

Consultation Responses

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

KC Highways Development Management – No objection

KC Environmental Health – Objection

KC Public Health – A Rapid HIA has not been submitted with the application. Therefore, Public Health cannot support this application unless the developer submits one for consideration.

Planning Policy Background

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 27th February 2019).

The site is UNALLOCATED on the Kirklees Local Plan Proposals Map. The most relevant policies for consideration in this case are:

- **LP 1** - Achieving Sustainable Development
- **LP 2** - Place Shaping
- **LP 7** - Efficient and Effective Use of Land and Buildings
- **LP 13** - Town Centre Uses
- **LP 16** - Food and Drink Uses and the Evening Economy
- **LP 21** - Highway Safety and Access
- **LP 22** - Parking
- **LP 24** - Design
- **LP 30** - Biodiversity and Geodiversity
- **LP 33** - Trees
- **LP 44** - New Waste Management Facilities
- **LP 47** - Healthy, Safe and Active Lifestyles
- **LP 48** - Community Facilities and Services
- **LP 52** - Protection and Improvement of Environmental Quality
- **LP 53** - Contaminated and Unstable Land

In this case, the following SPDs are applicable:

- Kirklees Waste Management Design Guide for New Developments (2020)

- Kirklees Highways Design Guide SPD (2019)
- Kirklees Hot Food Takeaway SPD (2022)

National Policies and Guidance

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) updated December 2024, the Planning Practice Guidance Suite (PPGS) first launched 6th 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. Most specifically in this instance, the below chapters are of most relevance:

- **Chapter 2** - Achieving Sustainable Development
- **Chapter 4** - Decision-Making
- **Chapter 8** - Promoting Healthy and Safe Communities
- **Chapter 12** - Achieving Well-Designed Places
- **Chapter 14** - Meeting the Challenge of Climate Change, Flooding and Coastal Change
- **Chapter 15** - Conserving and Enhancing the Natural Environment

Assessment

1. Principle of Development

The site is without notation on the Kirklees Local Plan (KLP). Policy LP1 of the KLP 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 NPPF. In terms of extending and making alterations to a property, Policy LP24 of the KLP is relevant and Chapter 12 of the NPPF, regarding design.

Town Centre Use

This application is for the use of premises as an online dessert shop (Use Class E(a) - Display or retail sale of goods, other than hot food) at Greengates House, 123 Chickenley Lane, Chickenley, Dewsbury, WF12 8QS. The site is approximately 200m away from the boundary of Chickenley Local Centre (LCB10) as designated in the Kirklees Local Plan.

The role and function of Local Centres like Chickenley is to provide top-up shopping along with local services, particularly food and drink. With the proposed development making provision for food and drink uses, it would be an appropriate use within Chickenley Local Centre.

Part B of Policy LP13 states that proposals which come forward for main town centre uses, which are located outside of the defined centre boundaries, will

require the submission of a Sequential Test. For retail proposals the boundary shall form the Primary Shopping Area; for all other main town centre uses this shall be the extent of the centre boundary. Main town centre uses shall be first located in the defined centres, then edge of centre locations, and only if there are no suitable sites shall out of centre locations be considered.

The National Planning Policy Framework defines edge of centre locations as being those within 300m of a centre boundary. With the site being approximately 200m away from the boundary of Chickenley Local Centre, the site is considered to be in an edge of centre location.

The applicant has not provided a sequential test with the application. Details regarding the requirements of the Sequential Test are outlined within Paragraph 9.12 of the Kirklees Local Plan states that the following evidence needs to be provided:

- The business model for the development
- An appropriate catchment that the business would seek to serve in accordance with the Shopping Centre Hierarchy Table
- An appropriate audit trail of any sequentially preferable sites that have been discounted with a robust justification

Kirklees Council have considered the latest occupancy data for Chickenley Local Centre and note that all premises within the Local Centre are currently occupied. As such, there are no available premises in Chickenley which could accommodate the proposed development. However, it may be the case that the catchment of the proposed business extends beyond Chickenley and that there are additional centres within that catchment. Therefore, the applicant would need to provide further detail on the catchment that the business would be serving, details on any sites that have been considered by the applicant and reasons as to why they have been discounted.

Part C of Policy LP13 states that an Impact Assessment would be necessary for proposals (including the formation of mezzanine floors) for/or which include retail, leisure and office developments which are not located within a defined centre where the proposal is located within 800 metres of the boundary of a Local Centre and is greater than 200 sq. m gross. The applicant has not confirmed how much floorspace the proposal will take up. If the proposed floorspace exceeds 200 sqm then a retail impact assessment will be required in addition to the Sequential Test.

On this basis, in the absence of the above information, it is considered that the proposed town centre use in this edge of centre location would have a detrimental effect on the vitality and viability of the nearby centres and would

fail to accord with Policies LP2 and LP13 of the Kirklees Local Plan and Chapter 7 of the National Planning Policy Framework.

Community Facilities and Services

Policy LP48 of the Kirklees Local Plan states that *'Proposals which involve the loss of valued community facilities such as shops, public houses and other facilities of value to the local community will only be permitted where it can be demonstrated that:*

- a. there is no longer a need for the facility and all options including the scope for alternative community uses have been considered; or*
- a. its current use is no longer viable; or*
- b. there is adequate alternative provision in the locality to serve the local community which is in an equally accessible location; or*
- c. an alternative facility of equivalent or better standard will be provided, either on-site or equally accessible; and*
- d. any assets listed on a Community Asset Register have satisfied the requirements under the relevant legislation.'*

The applicant is required to demonstrate only one of the criteria from a) to d) above. With regard to criteria c), it is noted that there are an alternative provision of churches in the Dewsbury area such as Our Lady and St Paulinus Roman Catholic Church on Huddersfield Road. Therefore, it is considered that there is adequate alternative provision in the locality and therefore the requirements of criterion c of LP48 of the Kirklees Local Plan are considered to have been met.

Food and Drink Uses and The Evening Economy

Policy LP16 of the Kirklees Local Plan states *"In order to assess the potential harm of food and drink and licensed entertainment proposals on a centre, the following criteria will be considered with a planning application:*

- a. the number, distribution and proximity of other food and drink uses, including those with unimplemented planning permission in a particular centre;*
- a. the impacts of noise, general disturbance, fumes, smells, litter and late night activity, including those impacts arising from the use of external areas;*
- b. the potential for anti-social behaviour to arise from the development, having regard to the effectiveness of available measures to manage potential harm through the use of planning conditions and / or obligations;*
- c. the availability of public transport, parking and servicing;*
- d. highway safety;*
- e. the provision of refuse storage and collection; and*
- f. the appearance of any associated extensions, flues and installations."*

Proposals for food and drink uses and licensed entertainment uses located outside of defined centres will be subject to criteria b to g set out under Policy LP16. The site is located outside of a defined town centre in the Kirklees Local Plan within a residential area. Sub paragraphs b – g of Policy LP16 have been considered in more detail within the officer report. The proposal shall now be assessed against all other material planning considerations, including visual and residential amenity, as well as highway safety.

1. Impact on Visual Amenity

Policy LP24 of the Kirklees Local Plan states that proposals should promote good design by ensuring the form, scale, layout, and details of all development respects and enhances the character of the townscape.

The NPPF also offers guidance relating to design in Chapter 12 (achieving well designed places) whereby Paragraph 131 provides a principal consideration concerning design which states: *“The creation of high-quality beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.”*

The submitted plans confirm that no external alterations are proposed as part of the application. On this basis, it is considered that the proposed change of use would not have any significant visual impact on the character and appearance of the surrounding area.

Having taken the above into account, the proposed development would not cause any significant harm to the visual amenity of either the host dwelling or the wider street scene, complying with Policy LP24 of the Kirklees Local Plan and the aims of Chapter 12 of the National Planning Policy Framework.

2. Impact on Residential Amenity

Consideration in relation to the impact on the residential amenity of neighbouring occupants shall now be outlined, taking into account Policy LP24 c), which sets out that proposals should promote good design by, amongst other things, extensions minimising impact on residential amenity of future and neighbouring occupiers.

The proposed works would not include any exterior alterations to the building and therefore the proposal would not cause any additional overlooking, overbearing or overshadowing harm to the residential amenity of the neighbouring occupants, over and above the existing arrangements on site.

Paragraph 198 of the NPPF outlines that planning decisions should ensure that new development is appropriate for its location considering 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.

This is also reiterated within Policy LP16 (b) which requires an assessment on the *“the impacts of noise, general disturbance, fumes, smells, litter and late night activity, including those impacts arising from the use of external areas”*.

The proposed change of use has the potential to cause noise which could detrimentally affect the amenity of the surrounding residential properties. As such, KC Environmental Health have been formally consulted on the proposed scheme. The proposed commercial development is neighbouring residential houses on 4 sides within distances ranging between 30 and 40m from the centre point of the proposed development. KC Environmental Health have had noise complaints related to similar establishments and have raised concerns that a commercial kitchen providing food, operating until 1am in the morning will detrimentally affect the amenity of the residential community in close proximity. This could arise from operational noise, delivery/collection vehicle noise (including customers vehicle noise and noise from loud radios/music systems, which will be beyond the control of the applicant). On this basis, it is considered that, the development would fail to accord with the aims of Policies LP16, LP24 and LP52 of the Kirklees Local Plan, HFT4 of the Council's Hot Food Takeaway Supplementary Planning Document and Chapter 15 of the NPPF.

3. Impact on Highway Safety

Local Plan Policies LP21 and LP22 of the Kirklees Local Plan are relevant and seek to ensure that proposals do not have a detrimental impact on highway safety and provide sufficient parking. Furthermore, Paragraph 116 of the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

This application seeks approval for an online dessert shop at Greengates House, Chickenley Lane. As such, KC Development Management have been formally consulted on the proposed scheme. Officers did note that the surrounding area is mostly residential and there are no waiting restrictions in

the vicinity of the site. Chickenley Road and Maple Road at this location are subject to a 30mph speed limit and can, and does, accommodate on street parking without being detrimental to road safety. Although the proposal is likely to generate additional vehicle movements, particularly during the evening, KC Highways DM would not raise highway safety as a reason to object.

In view of the above, it is considered that the proposal would not cause detrimental harm to the safe and efficient operation of the highway network, in accordance with Policies LP21 and LP22 of the Kirklees Local Plan, guidance within the Council's Highways Design Guide SPD, and Chapter 9 of the National Planning Policy Framework.

4. Other Matters

Climate Change

On 12th 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.

In this case, due to the nature of the proposal is not considered reasonable to require the applicant to put forward any specific resilience measures.

Public Health

Policy LP47 of the Kirklees Local Plan states the council will create an environment which supports healthy, active and safe communities and reduces inequality. Policy LP47(j) goes on to state that healthy, active and safe lifestyles will be enabled by working with partners to manage the location of hot food take-aways particularly in areas of poor health.

The application is 1,024.5 sqm and would meet the Public Health threshold (1000sqm) for the submission of a Rapid Health Impact Assessment. Furthermore, the site is located in a ward (Dewsbury East) with 3 health indicators higher than the Kirklees average. As such, KC Public Health have confirmed that they cannot support this application unless the developer submits a Rapid HIA for consideration. Therefore, the proposal would fail to

meet the requirements of Policy LP47 of the Kirklees Local Plan, HFT1 of the Hot Food Take Away SPD and Chapter 8 of the NPPF.

Biodiversity

The application form states that the development subject to the de minimis exemption, would be exempt from providing Biodiversity Net Gain. At this stage, Officers are only able to assess this on the basis of submitted information. Should the proposal be considered not exempt by reason of not being this or other relevant categories for the scale of the development then an appropriate condition, supported by a BNG metric submitted for the approval of the LPA, would be required to ensure on-site BNGs would last for at least 30 years to meet the requirements of this legislation.

Protected Trees

The council's mapping system confirms that there are four protected trees on this site covered by TPO 10/18. However, as no external alterations are proposed as part of the application, the proposal would be acceptable with regard to Policy LP33.

There are no other matters relevant to the determination of this application.

5. Representations

One representation was received following the statutory publicity, which is a general comment. This queries why, if still under consideration, has the development already started, in a building site with no permanent roof.

Officer Response: It is not an offence to start development prior to submitting a planning application, however it is carried out at the applicant's risk. As the application is to be recommended for refusal, the Council's Planning Compliance team will be informed of the decision, in order for them to deal with it accordingly.

6. Conclusion

This application for the use of premises for online dessert shop at Catholic Church of St Thomas More within the grounds of Greengates House has been assessed against relevant policies in the development plan as listed in the policy section of the report, the National Planning Policy Framework 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. This application has been assessed against relevant policies in the development plan and other material considerations. For the reasons set out above, it is

considered that the development would not constitute sustainable development and is therefore recommended for refusal.

Recommendation: Refuse

Decision Authorisation - Delegated Powers

Application Number: 2024/93287

Officer Recommendation: Refuse

Reasons for Refusal

1. The applicant has failed to demonstrate the potential health impacts of the proposal, through the submission of a Rapid Health Impact Assessment. As a result, the Local Planning Authority is unable to undertake a full and proper assessment of the development against Policy LP47 of the Kirklees Local Plan, HFT1 of the Council's Hot Food Takeaway Supplementary Planning Document and Chapter 8 of the National Planning Policy Framework.

2. The proposal by virtue of its opening hours, use and location would detrimentally affect the amenity of the nearby residential properties by reason of noise disturbance. To permit the proposal would be contrary to Policies LP16, LP24 and LP52 of the Kirklees Local Plan, HFT4 of the Council's Hot Food Takeaway Supplementary Planning Document and advice contained within Chapter 15 of the National Planning Policy Framework.

3. In accordance with Policy LP13 of the Kirklees Local Plan and Chapter 7 of the National Planning Policy Framework, Local Planning Authorities must apply a sequential approach to Main Town Centre uses that are not located within an existing centre. The applicant has failed to demonstrate, through submission of a sequential test and retail impact assessment, that the proposal would not harm the viability and vitality of nearby Town Centres. Therefore, the proposal would be contrary to Policies LP2 and LP13 of the Kirklees Local Plan and Chapter 7 of the National Planning Policy Framework.

Plans and specifications schedule: -

Plan Type	Reference	Revision	Date Received
Location Plan	TQRQM24329180245240	-	23/12/2024
Vehicle Parking Areas for Property Site Plan	TQRQM24329180245240	-	23/12/2024
Existing Floor Plan	-	-	23/12/2024

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 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.

Although the Kirklees Development Management Charter together with the National Planning Policy Framework and the DMPO 2015 encourages negotiation/engagement between Local Planning Authorities and agents/applicants, this is only within the scope of the application under consideration. In this instance, no amendments were sought as the principle of development could not be supported.

Report Dated: 14/02/2024