

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:	2025/70/90259/W
Site Address:	293b - 293c, Old Wakefield Road, Moldgreen, Huddersfield, HD5 8AG
Description:	Variation of condition 2 (opening hours) on previous permission 90/04592 for change of use from hairdressing salon to part of takeaway cafe to 08:00-23:00.
Recommending Officer:	Molly Storer

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: 28-Jan-2026

Officer Report

Reference: 2025/90259

Location: 293b - 293c, Old Wakefield Road, Moldgreen, Huddersfield, HD5 8AG

Proposal: Variation of condition 2 (opening hours) on previous permission 90/04592 for change of use from hairdressing salon to part of takeaway cafe to 08:00-23:00.

Site Description

293b and c Old Wakefield Road is a single storey building located in the Moldgreen District Centre. The end of terrace building is located on the corner of the junction between the highways of Old Wakefield Road and The Avenue.

Adjoining No. 293b/c westwards, the other terrace buildings function with a commercial use to the ground floor. To the north of the site, there are residential properties.

Description of Proposal

Variation of condition 2 (opening hours) on previous permission 90/04592 for change of use from hairdressing salon to part of takeaway cafe to hours of 08:00-23:00 is being sought.

Condition 2 of permission 90/04592, states the following:

The premises shall not be open outside the hours of 8am and midnight Monday to Saturday with no opening on Sunday.

Reason: *So as not to detract from the amenities of the adjoining property by reason of noise.*

It is now proposed that the opening times be as follows:

Open 8:00am until 23:00pm every day.

History of Negotiations/Amendments Received

No amendments have been sought in the processing of this application as it was considered acceptable as submitted.

Relevant Planning History

90/04592 – Change of use from hairdressing salon to part of takeaway cafe. Granted Conditional Full Permission.

95/93262 – Installation of new shop front. Granted Conditional Full Permission.

2007/93291 – Erection of 1 no. illuminated fascia sign. Advertisement Consent Granted.

2007/93314 – Erection of extract ducting. Granted Conditional Full Permission.

2022/93298 - Installation of new shopfront and external roller shutters - Conditional Full Permission.

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 site notice (as it is uncertain how the original application was publicised given that this was over 35 years ago) the notice expired on: 29th January 2026.

In response to publicity, no objections were received.

Consultation Responses

KC Environmental Health – States they have no objection to the variation in hours proposed and consider the re wording of condition No.2 to be acceptable.

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 27th February 2019).

The application site is within the Moldgreen District Centre (ref: DCB12) as identified upon the Kirklees Local Plan. The site also falls within an area identified by the Coal Authority as being at low risk of ground movement as a result of former mining activity.

The following policies are considered to be relevant to the consideration of this case:

Kirklees Local Plan (LP):

- LP24 – Design
- LP52 – Emissions

National Policies and Guidance:

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 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.

- Chapter 12 – Achieving Well-Designed Places
- Chapter 15 – Conserving and Enhancing the Natural Environment

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.

Assessment

The proposal relates to variation of condition no.2 of the original consent (ref: 90/04592). Therefore the principle of the development is already established. In terms of the determining issues relevant to the consideration of this application, this relates to the impact of varying condition no.2.

The reason for condition no.2 is to retain adequate planning control over the site in the interests of preventing excessive noise and disturbance to residential properties in the vicinity of the site. Although there has been changes in policy since the 1990 application it is considered that whether the proposal meets the requirements of policies LP24(b) and LP52 of the Kirklees Local Plan and policies within Chapter 15 of the National Planning Policy Framework is a key determining issue in this case.

Therefore, in this case the key determining issue is whether amendment of condition no.2 would have an acceptable impact upon residential amenity.

Impact upon Residential Amenity

Sections B & C of the Kirklees Local Plan Policy LP24 which states that alterations to existing buildings should: *‘Maintain appropriate distances between buildings’* and *‘...minimise impact on residential amenity of future and neighbouring occupiers’*.

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

The proposal seeks to extend the hours of operation.

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 developments. Policy LP52 of the Kirklees Local Plan seeks to ensure that, amongst other things, the impact from noise for new development is acceptable.

Policy LP52 is considered to be of relevance and sets out that development which has the potential to increase pollution from noise must be accompanied by evidence to show that 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.

The reasons for varying the operational hours is as follows:

- *The property has been converted to a convenience store.*
- *The property had been closed for some time and had fallen into disrepair.*
- *The property has now benefitted from a modernised frontage and a smart appearance.*
- *The property will serve the local community on a daily basis supplying specialist European goods and services.*
- *A premises Licence has been granted with the hours for the sale of Alcohol (Off Sales) 08:00-23:00 Sunday to Saturday.*

KC Environmental Health were formally consulted as part of this application. They state that the development site sits in a mixed commercial/residential area and is a former takeaway which would have similar hours. We therefore have no objection to the proposed hours. A condition is recommended to secure these hours in the interests of protecting amenity. This condition will ensure that although the premises can remain open there shall no deliveries to, or dispatches from the premises outside these hours. No deliveries shall take place on Sundays or Bank Holidays.

It is also noted that although the premises can remain open on Sunday's, throughout the week the premises will be open for one less hour a day than that approved on the 90/04592 application.

Subject to the imposition of a condition ensuring that the variation in hours are incorporated into the operation of the site, KC Environmental Health raise no objections to the proposals.

Therefore, taking account of the hours proposed and response of KC Environmental Health it is concluded that in terms of the impact of the extended hours on the amenity of neighbouring occupiers, the proposals are acceptable. The proposal is therefore concluded to be in accordance with Policies LP24 and LP52 of the Kirklees Local Plan and Chapters 12 and 15 of the National Planning Policy Framework.

Representations

None received.

Conditions

Any approval of an application for variation of condition effectively issues a new planning permission. Therefore a review all the conditions of approval and whether these need to be included / varied needs to be undertaken. This is set out as follows (there was only 2 conditions on the original application):

Condition 1 – Any extract ventilation and/or flue shall terminate at such a height and position and be provided with such filters as shall; be agreed by the Local Planning Authority prior to its first use.

Officer note: given the length of time since the original permission it is not considered necessary to repeat this condition in this case.

Condition 2 – This is recommended to be amended as applied for as set out earlier within this report.

Conclusion

The proposal is a Section 73 Variation of Condition application to vary Condition 2 (opening hours) to have extended hours. As set out above, in determining a S73, the Local Planning Authority must only consider the 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.

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 variation of the hours of use (condition no.2) is therefore recommended for approval.

Recommendation: Approval

Decision Authorisation – Delegated Powers

Application Number: 2025/90259

Officer Recommendation: Approve

Conditions and Reasons:

1. The use hereby permitted shall not be open to customers outside the hours of 0800hrs to 2300hrs and there shall be no deliveries to, or dispatches from, the premises outside these hours. No deliveries shall take place on Sundays or Bank Holidays.

Reason: To retain adequate planning control over the site in the interests of preventing excessive noise and disturbance to residential properties in the vicinity of the site, and to accord with the aims of Policies LP24(b) and LP52 of the Kirklees Local Plan and Chapter 15 of the National Planning Policy Framework.

Kirklees Council has powers under Section 60 of the Control of Pollution Act 1974 to control noise from construction sites and may serve a notice imposing requirements on the way in which construction works are to be carried out. It has additional 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.

Plans and Specifications Schedule: -

Plan Type	Reference	Version	Date Received
Site plan	TQRQM25030121413964	-	31/01/2025
Application form	-	-	03/02/2025

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 preapplication advice service available, complied with the Kirklees Development Management Charter 2024 and otherwise actively engaged with the applicant in dealing with the application.