

# **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>2025/70/92743/W</b>                                                                                                                                                                                                                      |
| Site Address:         | adj, 17, Hillhouse Lane, Fartown, Huddersfield, HD1 6EF                                                                                                                                                                                     |
| Description:          | Variation of condition 13 (hours of operation) on previous permission 2019/93483 for erection of 4 A1/A3 ground floor units, 3 B1 offices and ancillary space, a free standing ATM and car park to vary the hours of use for units 1 and 2. |
| Recommending Officer: | John Holmes                                                                                                                                                                                                                                 |

### **DECISION – REFUSE VARIATION OF CONDITION 13**

**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: 24-Jun-2026

## THE SITE & DEVELOPMENT

The site description and extent of the development are set out in the case officer report for application 2019/93483 hereafter referred to as the original application/permission.

This report should be read in conjunction with the case officer report for application 2019/93483 which can be viewed [here](#)

## THE PROPOSED VARIATION OF CONDITION/S

Submitted under Section 73 of the Town and Country Planning Act 1990 (as amended), this application seeks permission for the variation of condition 13 (hours of operation) on previous permission 2019/93483 for erection of 4 A1/A3 ground floor units, 3 B1 offices and ancillary space, a free standing ATM and car park to vary the hours of use for units 1 and 2.

The purpose of the application is to extend the opening hours to 02:00.

The wording of condition 13 currently states the following:

*The hereby approved uses shall not be open to customers outside of the hours of 07:00 and 23:00 on any day of the week. Reason: To ensure that the proposed uses do not give rise to the loss of amenity to nearby residential properties, by reason of noise or disturbance at unsociable hours, to accord with the aims of Policies LP24 and LP52 of the Kirklees Local Plan and Chapters 12 and 15 of the National Planning Policy Framework.*

## PLANNING HISTORY

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

2019/93483 – Erection of 4no. A1/A3 ground floor units, 3no.B1 offices and ancillary space, a free standing ATM and car par – Conditional Full Permission granted 5<sup>th</sup> January 2021.

2021/91457 – Discharge conditions 3, 5, 7-12 on previous permission 2019/93483 for erection of four A1/A3 ground floor units, three B1 offices and ancillary space, a free standing ATM and car park – Split decision discharging condition 3. Conditions 5, 7-11 and 12 remained undischarged.

2021/93078 – Discharge of conditions 3 (materials), 5 (cycle parking) & 7 - 11 (contamination & coal mining legacy) 12 (noise) on previous permission no. 2019/93483 for Erection of 4no. A1/A3 ground floor units, 3no.B1 offices and ancillary space, a free standing ATM and car park – Split decision discharging condition 3 & 5 with conditions 7 – 11 and 12 remaining undischarged.

2023/90216 - Discharge condition 15 (extract ventilation system) on previous permission 2019/93483 for erection of 4 A1/A3 ground floor units, 3 B1 offices

and ancillary space, free standing ATM and car park – discharge of conditions approved

## **REPRESENTATIONS**

Publication of the application has been undertaken in accordance with the Council's Development Management Charter

The application has been publicised in the same way the original application was publicised with the expiry of publicity being 17<sup>th</sup> April 2026.

No representations have been received.

## **CONSULTATIONS**

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

KC Environmental Health: Objects to the proposed extension of the hours of use.

Within their response, received 27<sup>th</sup> April 2026, the Environmental Health Team set out that they have reviewed the submitted Noise Impact Assessment (ref: NIA/1517/26/617/v1.0) which has undertaken baseline noise monitoring.

Within their response the Environmental Health Team note that the noise assessment does not take baseline noise monitoring from the main extraction unit at the site. They state in their response it is not clear where the unsilenced air intake equipment detailed in Appendix 4 is sited.

They go on to detail that following the discharge of planning condition 15 for the kitchen extract ventilation system, an officer from the pollution team has witnessed noise from the kitchen ventilation extraction system which was considered to be "intrusive" during a site visit. They go on to state that it is not clear if the installed system is of kitchen canopy, pre-filters, electrostatic precipitator, bifurcated extract fan, outside noise attenuators and a high velocity roof cowl which is to terminate 1m above the apex of the roof is identical to those detailed in the drawing titled Mechanical Services Kitchen Ventilation Layout (drawing no. M001) (dated: Jan 23) by Shearstone Mechanical Building Services Consultancy and whether the kitchen ventilation extract system is cleaned and maintained in accordance with the manufacturers instructions such that noise levels from the system are higher than anticipated.

Within their response they conclude that the introduction of the development has brought a potentially odour and noise generating business-use (the agent of change), into very close proximity to residential dwellings that previously would not have experienced either. They further elaborate that the impact of the position of the kitchen extraction system has not been considered by the

applicant in relation to their residential neighbours, and it was not clear from the information submitted with application 2023/90216 for the discharge of condition 15, the proximity of the neighbour's dwelling and windows to the installed system. This does not allow for optimal dilution of odours from the point of discharge and brings a noise source not previously experienced into very close proximity.

In conclusion, Environmental Health do not consider the location of the hot food take away development is appropriate for extended operational hours due to the impact this will have on the amenity of the neighbouring residential dwellings. They recommend that the hours of operation condition remains as originally worded.

Following on from their response of 27<sup>th</sup> April the applicant sought to submit further detail, with submission of a further document titled 'Memo' and dated 6<sup>th</sup> May 2026, undertaken by RP Acoustics.

The Environmental Health Team reviewed this, and in a further response dated 16<sup>th</sup> June they state the following:

*The additional information presented in the memo dated 6th May 2026 is helpful in that it clarifies the source of the measured noise levels, and we would request that the applicant confirm when they have undertaken the necessary work to reduce noise levels from the unsilenced air intake. Upon confirmation that the unsilenced air intake fan has been reduced, Environmental Health will be in a position to reconsider the variation of hours application. At present, Environmental Health has witnessed "intrusive" noise levels in the vicinity during the operation of the premises, and therefore we recommend refusal of the application and that the hours of operation condition remains.*

## **ALLOCATION AND POLICIES**

The allocations and policies relevant for the site and development are set out in the case officer report for the original application and it is not considered necessary to repeat them here.

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 to amend the opening hours to which the development can operate, and seeks to extend these by 3 hours per day from an 11pm closing time to a 2am closing time.

It is considered that the key determining issue/s in the consideration of this application is the impact such an amendment to condition 13 would have upon the residential amenity of neighbouring occupiers.

The reason for condition 13 is to ensure the uses do not give rise to the loss of amenity to nearby residential properties, by reason of noise or disturbance at unsociable hours.

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’.*

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.

The response of the Environmental Health Team is noted, including that there has been concerns raised by neighbouring occupiers in relation to the existing operations undertaken at the site and this has been observed by the Environmental Health Team in respect of noise impact.

The proposal would see an additional 21 hours of operations over the course of a week, which would be between 11pm and 2am. The additional timeframe being at a period of the day when a lesser extent of noise is expected to be experienced.

The content of the submitted noise assessment and the application form is noted however it is concluded that in this case to permit the additional hours as proposed would lead to an unacceptable impact to the amenity of neighbouring occupiers and lead to an unbalanced mix in this case in relation to the operation of the site and resultant impact this has to neighbouring residential occupiers.

It is therefore considered that by virtue of the resultant additional noise and disturbance associated with the additional hours of use, to vary condition no.13 would lead to an unacceptable loss of amenity for the occupiers of neighbouring residential properties contrary to policies LP24 and LP52 of the Kirklees Local Plan and policies contained within Chapters 12 and 15 of the National Planning Policy Framework.

## **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. For completeness this is undertaken as follows:

Condition 1. Time limit to implement the development. This would no longer be required as the development has commenced.

Condition 2. Plans list, remain as worded.

Condition 3. Construction Materials. This condition would no longer be necessary given the development has been constructed.

Conditions 4. Security measures required to be agreed in writing with the LPA before the use commences. As this remains undischarged it would be recommended to be re written to require a scheme is submitted within a three month timeframe.

Condition 5. Cycle Storage. This condition would no longer be necessary given the development has been constructed.

Condition 6. Surfacing. This condition would no longer be necessary given the development has been constructed.

Conditions 7 – 11. Land Quality. These conditions were never fully discharged. However given the extent of detail submitted it is considered these would no longer be necessary given the development has been constructed.

Condition 12. Noise Assessment. This condition was never fully discharged. As this remains undischarged it would be recommended to be re written to require a scheme is submitted within a three-month timeframe.

Condition 13. Hours of use. This is discussed within the 'Assessment' section of this report.

Condition 14. Deliveries hours of use. This would remain as worded.

Condition 15. Ventilation. This condition has been discharged and any grant of permission would be recommended to require the ongoing retention / maintenance of the approved scheme.

Condition 16. Lighting. This condition requires a scheme of artificial lighting to be submitted to the LPA should it be installed. It is recommended this condition remains as worded.

Condition 17. EV Parking. This condition requires installation of electric vehicle parking and is recommended to remain as worded.

Condition 18. Door / window opening restrictions. This restricts insertion of new openings and is recommended to remain as worded.

Condition 19. Bin storage. This requires provision of waste storage facilities and is recommended to remain as worded.

## **CONCLUSION & RECOMMENDATION**

The proposed amendment to condition no.13 would lead to an unacceptable loss of amenity to the occupiers of neighbouring residential properties for which no suitable mitigation is considered to be possible.

Refusal is therefore recommended.

## **Recommendation - VARIATION OF CONDITION/S REFUSED**

### **Decision Authorisation - Delegated Powers**

**Application Number:** 2025/92743

**Officer Recommendation:** Variation of Condition - Refused**Reason:**

1. By virtue of the resultant additional noise and disturbance associated with the additional hours of use, to permit the variation of condition no.13 would lead to an unacceptable loss of amenity for the occupiers of neighbouring residential properties, contrary to policies LP24 and LP52 of the Kirklees Local Plan and policies contained within Chapters 12 and 15 of the National Planning Policy Framework.

**Plans and specifications schedule:-**

| <b>Plan Type Submitted as part of application<br/>2025/92743</b> | <b>Reference</b>               | <b>Date Received</b>     |
|------------------------------------------------------------------|--------------------------------|--------------------------|
| Site Plan                                                        | 2525/01A                       | 16 March 2026            |
| Document titled Memo relating to noise                           | 2025/92743                     | 8 <sup>th</sup> May 2026 |
| Document titled 'Variation of Conditions - Opening Hours'        |                                | 16 March 2026            |
| Noise Impact Assessment                                          | NIA/1517/26/617/v1.0/Shakebees | 16 March 2026            |
| Application Form                                                 |                                | 16 March 2026            |
| <b>Plan Type Submitted as part of application<br/>2025/92743</b> | <b>Reference</b>               | <b>Date Received</b>     |
| Location Pan                                                     | HD-A-655                       | 26/11/2019               |
| Proposed Site Layout Plan and Ground Floor Plan                  | HD-A-655-101                   | 29/6/2020                |
| Topographical Survey                                             | -                              | 26/11/2019               |
| Level 1 Floor Plan                                               | HD-A-655-102                   | 29/6/2020                |
| Level 2 Floor Plan                                               | HD-A-655-103                   | 29/6/2020                |
| Front and Rear Elevations                                        | HD-A-655-104                   | 29/6/2020                |
| Side Elevations                                                  | HD-A-655-105                   | 29/6/2020                |
| 3D Perspective Front                                             | HD-A-655-109                   | 29/6/2020                |
| Coal Mining Risk Assessment                                      | G19425                         | 26/11/2019               |
| Design and Access Statement                                      | Oct 2016                       | 26/11/2019               |

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 2024 and otherwise actively engaged with the applicant in dealing with the application. No amendments were sought as it was considered that the proposal was unacceptable as submitted.