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**Report of the Head of Planning and Development**

**STRATEGIC PLANNING COMMITTEE**

**Date: 15-Jul-2020**

**Subject: Planning Application 2020/90026 Variation of conditions 5 (opening hours) and 6 (noise management plan) on previous application 2016/94001 for erection of extension to and rebuilding of fire damaged winery building Holmfirth Vineyard Ltd, Woodhouse Farm, Woodhouse Lane, Holmbridge, Holmfirth, HD9 2QR**

**APPLICANT**

Holmfirth Vineyard Ltd

**DATE VALID**

06-Jan-2020

**TARGET DATE**

02-Mar-2020

**EXTENSION EXPIRY DATE**

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Please click the following link for guidance notes on public speaking at planning committees, including how to pre-register your intention to speak.

<http://www.kirklees.gov.uk/beta/planning-applications/pdf/public-speaking-committee.pdf>

**LOCATION PLAN**



**Map not to scale – for identification purposes only**

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**Electoral wards affected: Holme Valley South**

**Ward Councillors consulted: Yes**

**Public or private: Public**

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**RECOMMENDATION: REFUSE**

1. The extension to the hours of operation of the premises to midnight on Thursday, Friday, Saturday, Sunday and Bank Holiday Monday would result in an unacceptable reduction in the quality of life and well-being of neighbouring residential occupants due to noise and activities that would be generated from the premises and outdoor areas over this extended period of time. The harmful impact on the residential amenity of neighbouring occupiers would be contrary to the aims of Policies LP24 and LP52 of the Kirklees Local Plan as well as Chapter 12 and 15 of the National Planning Policy Framework.

**1.0 INTRODUCTION:**

- 1.1 The application is brought by officers to Planning Committee for determination due to the significant level of representation received. This is in accordance with the Council's Scheme of Delegation.
- 1.2 The Chair of Committee has accepted that the reason for making this request is valid having regard to the Scheme of Delegation set out in the Council's Constitution.

**2.0 SITE AND SURROUNDINGS:**

- 2.1 The application site is located on Woodhouse Lane, approximately 2.5km to the south west of Holmfirth. It forms part of the Holmfirth Vineyard and includes a large building situated adjacent to Woodhouse Lane with growing areas beyond this to the north west.
- 2.2 The existing building includes a kitchen, function room, bar, dining and ancillary areas.
- 2.3 Access to the site is via Woodhouse Lane to an area of parking located to the north/north east of the site.
- 2.4 The site is set in an open rural location within the green belt. To the north east at a distance of over 50 metres, is Woodhouse Farm (listed building) and beyond which Lower Woodhouse both of which are residential properties. Located to the south east is Upper Woodhouse at a distance of approximately 100 metres as the crow flies. To the west of the site, at a lower level set into the hillside, is The Retreat which is a block of apartments.

### **3.0 PROPOSAL:**

3.1 The application seeks permission to vary conditions 5 (house of use) and 6 (noise management) of planning permission 2016/94001 for the extension to and rebuilding of fire damaged winery building at Holmfirth Vineyard. The conditions are set out in full below:

**5. The use hereby permitted shall not be open to customers outside the hours of 09.00 to 23.00 Monday to Sunday inclusive.**

**6. Prior to the development being brought into use a Noise Management Plan shall be submitted to and approved in writing by the Local Planning Authority.**

**The plan shall include:**

- **Times of operation (internally and externally).**
- **How and when staff will patrol external areas to ensure guests are not noisy and that no excessive noise is escaping from the function room;**
- **Doors and windows to the function room remaining closed during regulated entertainment;**
- **The placement of signage around the function room and external areas requesting that guests are quiet and respect neighbours;**
- **Arrangements with local taxi firms regarding being quiet on late night collections and no sounding of horns;**
- **Provision of noise limiter within the function room;**
- **Telephone numbers and names of those in charge on the night of functions( in case of complaint)**

**The development shall thereafter be undertaken in accordance with the approved Noise Management Plan.**

3.2 The application seeks to extend the hours of opening to customers to the hours of 09:00 to midnight. Thursday to Sunday and to include Bank holidays. Due to the inclusion of the approved hours being incorporated and included in the approved Noise Management Plan (Condition 6) a variation to this document is also sought.

### **4.0 RELEVANT PLANNING HISTORY (including enforcement history):**

4.1 2017/91853 – Discharge of conditions 3 (noise), 6 (noise), 9 (travel plan) on previous permission for erection of extension to and rebuilding of fire damaged winery building - Approved

2016/94001 – Erection of extension to and rebuilding of fire damaged winery building – Approved at Planning Sub-Committee

2015/91523 – Engineering works to form public area – Refused at Planning Sub-Committee – Upheld on Appeal

2008/90052- Listed building consent for re-use of barn, new extensions to extend existing dwelling -Consent Granted.

2008/90051- Reuse of existing barn to extend dwelling (listed building)  
Approved.

2009/90895- Agricultural Notification for prior approval for details of erection  
of building – Details approved.

2009/93461 Extension to existing agricultural building to form wine shop and  
tasting room with formation of access and additional parking provision.  
Erection of sedum-roofed eco lodge in existing quarry containing 7 units, 1 no  
wind turbine on 9 m mast, septic tanks and 32 no air source heat pumps-  
Approved and Implemented

2015/90173-Erection of agricultural building- Refused

2015/91522 -Erection of agricultural shed- Approved

2015/91532.Engineering works to form public area- Approved subject to two  
condition. (Retrospective application)

### ENFORCEMENT

- 4.2 The vineyard has been operating since 2009 providing tours around the grounds, accommodation for guests, ancillary restaurant and facilities for functions. Complaints were initially received by the Planning Service in 2011 with concerns raised including the use of the former agricultural building for restaurant leading to customer parking and an increase in traffic on Woodhouse Lane. Following investigation it was considered the use of the site was operating within the scope of the 2009 planning permission.
- 4.3 It was noted in 2014 an engineering operation to develop a level plateau on the sloping site had been carried out to allow the erection of a temporary structure for spectators of the Tour-de-France event. This was retained without planning permission and formal action was taken for its removal. The retrospective application to retain the raised ground was upheld on appeal to the Planning Inspectorate.
- 4.4 The former building was razed via a fire in 21016. An application approved at committee allowed for re-development of the site to include a function room and wider facilities. The operations of the site were restricted in terms of numbers of visitors in addition to noise and parking controls. Noise measurements taken by the Council following the completion of the development confirmed the sounds insulation was fit for purposes and the noise management plan has been in place since the use of the building commenced. There is no evidence submitted with the application to demonstrate that the Travel Plan has been implemented during this time period.
- 4.5 Following the approval of application 2016/94001 and subsequent discharge of conditions application the site is able to apply for a temporary events notice up to 15 times a year to allow for the extended hours of use at such events. This is not considered in breach of any planning condition.
- 4.6 Sporadic complaints regarding customer parking have been received since 2016 although it has not been established to be in breach of planning control and no further formal action has been taken.

## **5.0 HISTORY OF NEGOTIATIONS (including revisions to the scheme):**

- 5.1 The agent was advised that support could not be given to the application to extend the hours. The application has been amended to seek permission to operate until midnight instead of 1:00am.
- 5.2 Supporting statements have been amended to include this change. The agent was invited to submit evidence to demonstrate that a Travel Plan has been implemented and this aspect of the development continues to be managed. However, no further information in this respect has been forthcoming. The agent states that the Local Planning Authority have adequate information to consider the proposals.

## **6.0 PLANNING POLICY:**

- 6.1 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<sup>th</sup> February 2019).

### Kirklees Local Plan (2019):

- 6.2 The site is allocated as Green Belt on the Kirklees Local Plan.
- 6.3 Relevant policies are:

LP1 – Presumption in favour of sustainable development  
LP10 – Supporting the rural economy  
LP16 – Food and drink uses and the evening economy  
LP21 – Highway safety and access  
LP24 – Design  
LP52 – Protection and improvement of environmental quality

### National Planning Guidance:

- 6.4 National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 19th February 2019, 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 6 – Building a strong, competitive economy  
Chapter 8 – Promoting healthy and safe communities  
Chapter 9 – Promoting sustainable transport  
Chapter 12 – Achieving well designed places  
Chapter 13 – Protecting Green Belt Land  
Chapter 14 – Meeting the challenge of climate change, flooding and coastal change  
Chapter 15 – Conserving and enhancing the natural environment

## 7.0 PUBLIC/LOCAL RESPONSE:

7.1 Following an initial period of site publicity 116 representations were received up to and including the 14<sup>th</sup> April 2020. These broke down to 43 support and 73 objections. The application was re-advertised from the 15<sup>th</sup> April 2020 with no further letters of support being received and 24 objections.

For completeness the matters contained in all representations are summarised as follows:

### *Summary of support:*

- Economic viability & local economy & jobs & tourism
- Mitigation measures already in place (noise and traffic)
- Design
- Save the council money in temporary licenses

### *Summary of objections:*

- Noise/Light pollution
- Use of fireworks
- Nightclub/Outdoor music events causing nuisance
- Inappropriate development in the Green Belt/not agricultural
- Detract from rural setting/Environment
- Poor access, Parking & Highway safety
- Police involvement
- Not promoting local labour/economic development/detract from local business
- Letters of support from elsewhere

### **Holme Valley Parish Council – Support the application**

**Councillor Patrick** – “There is a history of problems at this site with on road parking blocking the road and noise nuisance affecting neighbours, and we have tried very hard over the years to control the site and the impact on the neighbouring properties by way of planning conditions. When the previous approval was made it was done so on the basis that it would bring some control and Condition 5 and 6 were an important part of that control. Unfortunately, neighbours have reported breaches of the Conditions and instead of enforcement action leading to better planning control it has led to an application to vary the conditions. We already therefore know that if variation of the conditions is approved it will lead to more nuisance, and on that basis the application should be refused.”

**Councillor Paul Davies** – “Many thanks for this information. I note the support of Holme Valley Parish Council for the application and the comprehensive work that has been carried out on putting in place a robust Noise Management Plan at the Vineyard in partnership with the Council. Thus there seems to me to be a very strong foundation in place for the application. However I would be interested in hearing Officer’s views on this matter.

I have also visited the site in recent months and been given an overview of the operation by the owners.

Please note I am a member of the Planning Committee which would review this application if it did come to committee.”

## **8.0 CONSULTATION RESPONSES:**

### **8.1 Statutory:**

**KC Highways Development Management:** No objection in principle

### **8.2 Non-statutory:**

**KC Environmental Health:** Object

**KC Tourism:** No comments received

## **9.0 MAIN ISSUES**

- Principle of development
- Residential amenity
- Highway issues
- Representations
- Other matters

## **10.0 APPRAISAL**

### Principle of development

- 10.1 The existing use is considered beneficial in terms of supporting a prosperous rural economy delivering tourism and leisure that benefit business, communities and visitors. Development should support the provision and expansion of tourist and visitor facilities in appropriate locations. The existing site operations attract a number of visitors to the district and as such delivers positive economic benefits to the area including employment opportunities.
- 10.2 Policy LP10 states that the economic performance of the rural economy will be improved by (c) increasing local employment opportunities; (d) supporting and increasing tourism related development which are applicable to the operations of the vineyard. Consideration should be given to the increase in operating hours and how this supplements the existing business operations and model. It is likely that the additional 2 hours opening until midnight is inconsequential in terms of employment and tourism generation, however it is recognised that the flexibility of opening may prove more attractive to customers. It is noted, however, that the venue had been operating successfully.
- 10.3 The application for a larger replacement building was previously assessed in terms of its rural green belt location. Sensitive location and designed schemes may be acceptable in the Green Belt but protection should be given regard to all relevant policies in the plan and national planning policy. Whilst sustaining the business operations is of importance it is not considered that this should be at the consequence of harm to occupants in the locality. The site is in an isolated location and extending the operating hours would not be

in the wider interests of occupants in the locality. There are no justifiable economic circumstances to outweigh the harm.

- 10.4 The application relates to the variation of conditions 5 regarding opening hours and 6 (noise management plan) on the previously approved application for the erection of an extension to and rebuilding of the fire damaged winery building (2016/94001). These original proposals were presented to Huddersfield Sub-Committee on the 9<sup>th</sup> March 2017. The proposed development was approved subject to conditions restricting the hours of opening to 9:00 to 23:00 Monday to Sunday inclusively. In addition, Condition 6 sought to control the operations of the development through the submission of a noise management plan. As the management plan specifies the operating times this document would require updating to reflect the changes. The main issues to consider are the impact that the operations would have on the amenity of the area with specific regard for nuisance generated from the premises themselves and site operations.
- 10.5 The application is accompanied by a supporting planning statement in addition to a noise report. Reference is made to the site operations where it is stated that the applicant has held a number of functions beyond the hours approved with 7 functions carrying on until midnight and 18 until 1:00am. It is understood that these were all granted a temporary late licence. The noise management plan required events to be logged and evidence has been submitted in order to demonstrate ongoing arrangements and provide justification for the extended hours. The information submitted includes the type of function, number of guests, start and finish time, decibel readings at set times, whether the doors were closed to minimise sound pollution, the name of the car parking marshal on duty and any incidents that may have arisen. In addition, a noise survey has been carried out.

#### Amenity

- 10.6 The application site is in an isolated rural location open to all sides. Whilst it is acknowledged that the premises can currently operate to 23:00 this application proposes to extend this to midnight on Thursday, Friday, Saturday, Sunday and Bank Holidays. When considering a planning application the impacts of noise and general disturbance should be considered. Policy LP52 states that *“proposals which have 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 wellbeing of people to an unacceptable level or have unacceptable impacts on the environment”*. The application is accompanied by evidence with the aim of demonstrating that in exceeding the approved opening hours there have been no complaints as a consequence. In addition, a noise survey has been carried out and submitted for consideration. This information has been considered by KC Environmental Health.
- 10.7 In this regard Environmental Health have confirmed there have been 9 complaints (this includes 1 to licensing) in the last 6 months. 4 of the complaints relate to the use of fireworks and the impact of these in respect of noise and distress to animals. 5 relate to general noise issues and vehicle movements. Noise needs to be considered when development may create additional noise, or would be sensitive to the prevailing acoustic environment. This is of particularly relevance when considering the location of the site.



- 10.8 The original application for a replacement building including hours of use to 11pm was thoroughly assessed at the time. There are a number of dwellings in proximity to the application site but it was also recognised that the sites location on a hillside and range of uninterrupted visibility that the potential for disturbance for residents both within their homes and in their amenity space is a significant planning issue that requires assessment.
- 10.9 The potential for noise/disturbance comes from the use of the function room and subsequent pedestrian and vehicle movements when leaving. The application was accompanied, at the time, by a Noise Report. The development incorporated mitigation measures significant enough to avoid nuisance to any occupant in the locality. In addition to this, subsequent to the decision, a Noise Management Plan was produced and agreed to ensure a coordinated approach to the management of the site. In accordance with the National Planning Practice Guidance Note regarding noise it is considered that a full assessment of the proposals for operation to 11pm was carried out and the application decision addressed the adverse effects of noise sources through the use of planning conditions and mitigation.
- 10.10 Since the erection of the restaurant/function room and operations since autumn 2017 a number of complaints have been received to different service areas. The complaints made to Environmental Health have not been substantiated by this service and as such investigations are ongoing in regard to the most recent complaints. It is noted that the noise management plan submitted to accompany the application has not been updated and should be prior to any decision being issued. Taking into account the evidence and reports submitted Environmental Health have confirmed that concerns remain regarding the operations within such a quiet rural location. Whilst it is recognised the venue can host events within their well-insulated function room without noise escape/complaint the concerns extend to the external noise. It is considered that noise generated as a result of activities from outside the premises is difficult to address and control. The level of representation validates concerns.
- 10.11 The potential impacts arising from development leading to an impact on health are capable of being a material planning consideration. Furthermore, existing sources of noise and other pollution can have an adverse impact on the environment and sensitive developments will need to be controlled to ensure they do not expose new receptors to levels detrimental to healthy living or safety concerns. Policy LP52 aims to help maintain quality environments. Proposals that have the potential to cause pollution when functioning need to be assessed and appropriate mitigation secured. In this case there is insufficient confidence in the assessment of risk and there is reason to believe that harmful effects may occur. As such, concerns remain regarding the development proposals, that would not be reversible if approved, and as such a precautionary principle should be adopted. The proposed development is considered contrary to Policy LP52 in that the submitted details have not demonstrated that suitable and sustainable mitigation measures can be put in place to prevent a reduction to the quality of life of those living nearby.

## Highway issues

- 10.12 The site is in a remote location served by a narrow local road network. The proposal relates to the extension in opening hours and as a consequence, amendments to the noise management plan. It is not considered that the increase in operating hours will result in any detriment to highway safety or other road users as the times proposed are outside peak hours for traffic generation.

## Representations

### 10.13 **Support:**

Economic viability & local economy & jobs & tourism

**Response:** The site operations are considered to contribute to economic viability. However any planning application should be considered on its own merits.

Mitigation measures already in place (noise and traffic)

**Response:** Mitigation measures are in place in terms of noise attenuation from the premises. External operations are more difficult to control. There is no evidence that the traffic is being managed in accordance with any travel plan.

Design:

**Response:** There are no design changes as a consequence of this application.

Save the council money in temporary licenses

**Response:** Noted.

### **Objections:**

Noise/Light pollution

**Response:** The application is accompanied by a noise report and evidence of operations. The application has been referred to Environmental Health for comment who raise concerns as outlined in the assessment above.

Use of Fireworks:

**Response:** It is possible to consider planning conditions for the use of fireworks, however planning controls would not cover the events below as covered by separate legislation as follows:

You must not set off fireworks between 11pm and 7am, except for:

- Bonfire Night, when the cut off is midnight
- New Year's Eve, Diwali and Chinese New Year, when the cut off is 1am.

Nightclub/Outdoor music events

**Response:** The site does not have permission to operate as a nightclub. The proposal relates to extending operating hours and has been assessed on that basis.

Inappropriate development in the Green Belt/not agricultural

**Response:** The original application was assessed on its planning merit and location. This application relates to extending the hours. For the reasons outlined in the report the proposals cannot be supported.

Detract from rural setting/Environment/Close to the Peak District National Park

**Response:** The application is to extend the hours of operation. The site operations have previously been assessed for their appropriateness in terms of the location under the 2016 application. For the reasons outlined the proposals are not considered acceptable.

Poor access, Parking & Highway safety

**Response:** The application relates to the increase in hours of operation to allow opening until 1:00am. There is no evidence that the operations have been carried out in accordance with a detailed Travel Plan. This information has been requested. Whilst KC Highways DM raise no objections in principle to the extended hours there are concerns that there is no ag.

Police involvement

**Response:** The West Yorkshire Police Liaison Officer has been consulted and note there have been 3 calls within the last year. These related to noise nuisance from fireworks and vehicle obstruction. Advice was given.

Not promoting local labour/economic development/detract from local business

**Response:** The application site generates employment and contributes economically currently.

Letters of support from elsewhere

**Response:** All comments submitted in respect of the application are taken into account.

Other Matters

- 10.14 On 12<sup>th</sup> 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 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.
- 10.15 Taking into account the above and considering the nature of the application it is not considered proportionate to request any specific measures.

## 11.0 CONCLUSION

- 11.1 The NPPF 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.
- 11.2 The application proposes an increase in hours from 23:00 to midnight on Thursday, Friday, Saturday, Sunday and Bank Holiday Mondays. Whilst the venue itself is well-insulated without noise escape/complaint concerns relate to external noise. It is considered that noise generated as a result of activities from outside the premises is difficult to control. Due to the local environment and time proposed there would be harmful impacts on the well-being and amenity of nearby occupants contrary to the aims of Policies LP24 and LP52 of the Kirklees Local Plan as well as Chapter 12 and 15 of the National Planning Policy Framework.
- 11.3 This application has been assessed against relevant policies in the adopted Kirklees Local Plan and other material considerations. It is considered that the development proposals do not accord with the development plan and the application of policies in the NPPF that protect areas or assets of particular importance provide clear reasons for refusing the development proposed.

**Background Papers:**

Application and history files.

Website link to be inserted here:

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2020%2f90026>

Certificate of Ownership – Notice served on/ or Certificate A signed: 6<sup>th</sup> January 2020