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

**HUDDERSFIELD PLANNING SUB-COMMITTEE**

**Date: 13-Apr-2023**

**Subject: Planning Application 2022/93158 Variation condition 5 (opening hours) on previous permission 2013/92338 for change of use of retail unit to indoor sport and recreation unit Former Homecare DIY, Westbourne Road, Huddersfield, HD1 4LF**

**APPLICANT**

B Uppal

**DATE VALID**

26-Sep-2022

**TARGET DATE**

21-Nov-2022

**EXTENSION EXPIRY DATE**

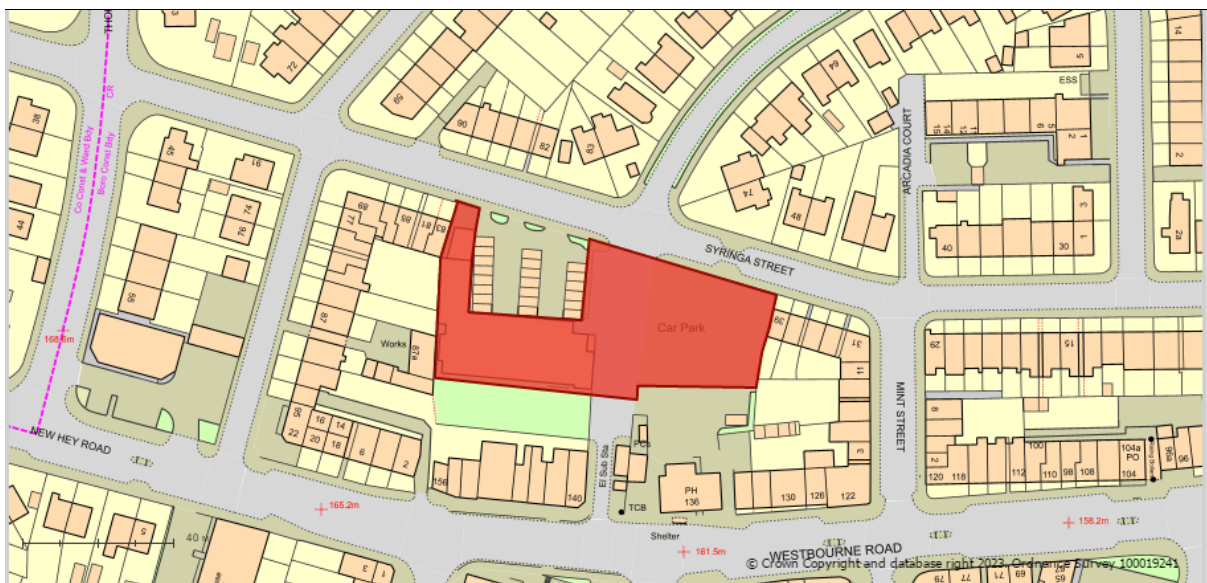
01-Dec-2022

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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.

[Public speaking at committee link](#)

**LOCATION PLAN**



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

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**Electoral wards affected: Greenhead**

**Ward Councillors consulted: No**

**Public or private: Public**

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**RECOMMENDATION:**

DELEGATE approval of the application and the issuing of the decision notice to the Head of Planning and Development in order to complete the list of conditions including those contained within this report.

**1.0 INTRODUCTION:**

1.1 This application is brought before the Sub-Committee for determination under the terms of the Delegation Agreement at the request of officers with the agreement of the Chair, taking account of the planning site history.

**2.0 SITE AND SURROUNDINGS:**

2.1 The building that is the subject of this application is located on a backland site north of Westbourne Road and south of Syringa Street. It measures approximately 35m by 14m and comprises brick, stone, and a more modern element at the eastern, or front, end built in artificial stone and metal sheeting. The entrance is to the east, and it is accessed by means of an unadopted road linking to Westbourne Road and Syringa Street, which also provides access to a large customer car park and is itself a Public Right of Way (byway) HUD/351/10.

2.2 The building is occupied by Playworld, comprising a mixed-use sport and recreation centre with a multi-storey play gym that offers activities for children from 0-10 years old with a separate baby zone area and which also serves food to parents and children. The rollerskating rink is also available for use by adults.

2.3 To the south, and with a frontage to Westbourne Road, is a row of two storey commercial properties, and opposite, the Co-op supermarket. To the east of the unadopted access road is a listed public house, the Croppers Arms. To the north of the site are some prefabricated garages arranged in three parallel rows, accessed off Syringa Street. Other than this, Syringa Street is residential in character. To the west, beyond the rear elevation of the premise, are residential properties along Cleveland Road.

**3.0 PROPOSAL:**

3.1 The proposal is for Variation condition 5 (opening hours) on previous permission 2013/92338 for change of use of retail unit to indoor sport and recreation unit. The original condition reads:

“5. The use hereby permitted shall not be open to customers outside the hours of 09:00 to 21:00 Monday to Sunday.

**Reason:** In the interests of residential amenity and to accord with Policies D2 and EP6 of the Kirklees Unitary Development Plan and Policies in the National Planning Policy Framework.”

The applicant requests that hours be extended to:

- In the case of Fridays and Saturdays, 09:00 to 00:30 hours;
- In respect of Sundays to Thursdays 09:00 to 23:15 hours.

3.2 Accordingly, it is requested that the Condition is amended to read:

“The use hereby permitted shall not be open to customers outside the hours of:

Friday 09:00 to 00:30 hours Saturday,  
Saturday 09:00 to 00:30 hours Sunday,  
Sunday to Thursday 09:00 to 23:15 hours.”

3.3 Acknowledging that the Licensing regime is separate to planning, it is noted that prior to 2022 a Premises Licence had already been applied for, and granted, for all licensable activities on site. Under the original Premises License, most activities could be carried on as late as 23:45 (23:30 for sale of alcohol) Fri/Sat, finishing an hour earlier Sun-Thurs, and “late night refreshment” until midnight.

3.4 It is claimed in the applicant’s supporting statement that the business has been operating since 2014 within the terms of the License as set out above. A variation of the Premises License was granted in August 2022. This permitted a number of activities (sale of alcohol, performance of dance, indoor sporting events, live music, recorded music) to be carried on until 23:45 on any night of the week. In effect, then, the proposed variation of condition would give planning consent for activities to be carried on within the terms of the Premise License for 5 nights a week and for 45 minutes later than the time permitted by the Licence on two nights of the week only. The applicant’s supporting statement sets out that this is to provide “an extra half hour for customers to ‘wind down’ and leave”.

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

4.1 95/92199 – Change of use from retail supermarket to roller skating and leisure centre. Conditional full permission.

2009/92903 – Change of use from DIY store to indoor shopping centre. Consent not required.

2012/91978 – Change of use from retail unit (DIY store) to restaurant and alterations. Refused, appeal upheld.

2013/92338 – Change of use from retail unit to indoor sport and recreation. Conditional full permission.

2014/90523 – Discharge of conditions 3, 4, 7, 8, 9, 12. Split decision.

2014/90524 – Variation in condition 5 (opening hours) on previous permission 2013/92338 for change of use of retail unit to indoor sport and recreation unit. Deemed withdrawn.

COMP/22/0241 – Alleged breach of opening hours condition and outdoor play area . Retrospective planning applications submitted, one the subject of this application and the other subsequently refused and appeal lodged.

2022/92840 – Advertisement consent for erection of 3 non-illuminated advertisements. Granted December 2022.

2022/92839 – Change of use of land to form outdoor seating and play area with siting of portable building. Refused and appeal lodged.

2022/92247 – advertisement consent for non-illuminated signs (retrospective) refused and appeal lodged.

Non-planning consents:

The latest Premises License, dated 03-Aug-2022, permits licensable activities within the existing building 0900-2345 on any day of the week.

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

- 5.1 Noise Management Plan submitted 07-Nov-2022, amended February 2023  
This was not subjected to further publicity since it was not considered to raise new issues that would require the opportunity for further public comment.

**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 without designation on the Local Plan. It is just outside the boundary of the Marsh District Centre. A Public Right of Way runs through the site but this is not considered to be material to the application since it is for an extension of hours and would therefore not affect the Public Right of Way or its setting.

- **LP 1:** Achieving sustainable development
- **LP 2:** Place shaping
- **LP 16:** Food and drink uses and the evening economy
- **LP 20:** Sustainable travel
- **LP 21:** Highways and access
- **LP 24:** Design
- **LP 24:** Design
- **LP 52:** Protection and improvement of environmental quality

## Supplementary Planning Guidance / Documents:

### 6.3 KC Highways Design Guide 2019

## National Planning Guidance:

### 6.4 National Planning Policy Framework

- Chapter 8 – Promoting healthy and safe communities
- Chapter 12 – Requiring good design
- Chapter 15 – Conserving and enhancing the natural environment.

## **7.0 PUBLIC/LOCAL RESPONSE:**

7.1 The application was publicised by neighbour letter only in accordance with the requirements of the Development Management Procedure Order and Kirklees Development Management Charter. The period of publicity expired on 11<sup>th</sup> November 2022. It was considered that since the application was for a variation of condition only, it would not affect the Public Right of Way that crosses the site, or its setting).

7.2 13 representations received (12 objections and 1 comment).

Summary of concerns raised:

7.3 Objections:

- Noise arising from late night drinking.
- Possible increase in anti-social behaviour especially from people leaving the venue late at night.
- Noise from amplified music is already a problem;
- Light pollution;
- Parking and traffic problems
- It is unnecessary as the pub next door provides these facilities
- Red line boundary is wrong – it should only include the original application site.
- The original planning appeal decision on the 2012 application allowed hours of use to be no later than 2330 Mon-Fri and midnight on Saturdays Sundays and Bank Holidays. The subsequent application 2013/92338 allowed no later than 2100 on any night. These should be treated as material considerations; however, the roller disco use is noisier than the restaurant use that was successfully appealed.
- Safety issues – have they installed an appropriate fire door?
- There are already too many hot food takeaways in Marsh which give rise to litter.

#### 7.4 Comments:

- We would broadly support the Environmental Health Officer's comments of 31<sup>st</sup> October 2022. However, as the proposed hours of use are untested, we would suggest a temporary consent for a period of 12 months within which the unit must operate at full opening hours to properly ascertain noise impact, and should be limited to those imposed by the Inspector (09:00 to 23:30 Monday to Friday and 09:00 to 00:00 on Saturday's Sundays and Bank Holidays).
- We would encourage imposition of a condition which ensures that ensures that windows and doors are closed at all times, with the exception of persons accessing and egressing from the property. To avoid increase in noise and disturbance caused by virtue of the extended opening hours.
- A condition restricting the use to inside the building only would also be welcomed.

#### 8.0 CONSULTATION RESPONSES:

8.1 **Statutory:** There were no statutory consultees.

8.2 **Non-statutory:**

KC Environmental Health – Recommend that the proposal can be approved.

Designing Out Crime Office – no objections.

#### 9.0 MAIN ISSUES

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

#### 10.0 APPRAISAL

##### Principle of development

- 10.1 The site is without designation in the Local Plan. The principle of the entertainment and leisure use in this location has already been established, and no material change in the use of the site, nor the formation of any new or enhanced facilities, is proposed.
- 10.2 Policy LP16, "Food and drink uses and the evening economy" is pertinent to this application, especially part (b) which states that the impact of noise, general disturbance, fumes, smells, litter and late night activity, must be considered with any planning application.

- 10.3 Under Policy LP24(b), development must provide a high standard of amenity for future and neighbouring occupiers. The assessment of the application must therefore take into account the relationship between commercial and residential uses, whether existing or proposed. Also of relevance is LP52, which states that any proposal that has the potential to increase pollution (including from noise) must be accompanied by evidence to show that the impacts have been evaluated and measures incorporated to prevent or reduce their impact.
- 10.4 Turning to the NPPF, Chapter 12, paragraph 130(f) advises that planning decisions should create places that promote health, well-being and a high standard of amenity. Under Chapter 15, paragraph 174(e), decisions should ensure that existing development should not be adversely affected by unacceptable levels of noise pollution. Chapter 8 states that planning decisions should create safe environments in which the quality of life is not undermined by crime and disorder, or the fear of crime.
- 10.5 Any possible transport and highway safety implications will be assessed having regard to the aims of LP20-22.

#### Urban Design issues

- 10.6 Since neither new build nor physical alterations are proposed, it is considered that the proposal has no implications for visual amenity or design.

#### Residential Amenity

- 10.7 Another application associated with these premises seeking retention of an outdoor play area, 2022/92839, was refused partly on the grounds that it would be likely to cause loss of amenity to residential properties in the vicinity of the site, in particular 2-16 New Hey Road, arising from noise disturbance. This application was however for the change of use of vacant land to the south of the premises to create an outdoor seating area. The application now under consideration relates solely to the building itself and does not involve the creation or retention of any outdoor facility. The two proposals are therefore, in effect, separate and unrelated, and the refusal of the permission to create the outdoor seating and play area must be treated as being entirely without prejudice to the present application.
- 10.8 The site is located just outside the Marsh District Centre. None of the commercial premises to the south of the site appear to have residential uses above or at the rear. Nos. 2-16 New Hey Road, which are to the south-west of the site and in residential use, do not directly face the application site or share a boundary with it, nor are they adjacent to the parking area or site access. It is considered unlikely that they would be affected by noise associated with the existing building, even with the hours extended as proposed.
- 10.9 Immediately to the north of the Playworld building are some rows of sectional garages with access to Syringa Street. Otherwise Syringa Street is strongly residential in character. The nearest residential property to the east of the frontage is 39 Syringa Street, which is approximately 46m from the main entrance to the Playworld building but shares a boundary with the car park. To the north properties along the north side of Syringa Street are around 40m from

the main body of the building. To the west (rear) are a cluster of dwellings along Syringa Street and Cleveland Road. The properties on Cleveland Road are around 19m from the rear of the property and no. 83 Syringa Street abuts to the north-west corner of the building.

- 10.10 Environmental Health Officers have confirmed that over the time it has been operational the premises have given rise to several complaints about excessive noise. An upgrade to an external door has recently been carried out which has served to improve the sound insulation of the building and prevent noise from leaking out. Regardless of the effectiveness of the building envelope in noise containment, however, noise arising from users arriving at, and leaving, the premises, may however still be audible from outside the site. This may include, but not be restricted to, noise from car and taxi engines. The later in the evening these sources of noise occur, the more likely they are to give rise to disturbance.
- 10.11 An amended Premises License was granted in 2022 for extended opening hours. The hours that are being sought under the current application are 45 minutes beyond the latest end time for the range of activities set out in the current Premises License; for Sundays through Thursdays it is 30 minutes earlier than the closing time allowed by the Premises Licence.
- 10.12 The granting of a Premises License is a separate regulatory regime. The NPPF, at paragraph 187, is clear that Planning decisions should assume that these regimes will operate effectively. Equally, where a planning decision has been made on a particular development, the planning issues should not be revisited through the permitting regimes operated by pollution control authorities. Planning and licensing regimes involve consideration of different (albeit related) matters. Planning committees are not bound by decisions made by a licensing committee, and vice versa.
- 10.13 Early on in the application process, Environmental Health requested a Noise Management Plan, which would detail the control measures taken to ensure that noise does not arise from the use of the property and the actions that will be taken if users of the premises and staff fail to observe the required control measures.
- 10.14 The applicant has submitted a Noise Management Plan (latest version submitted 27-Feb-2023) containing the following measures:
  - i. There will be no readmission to the premises 15 minutes before closing;
  - ii. Notices will be displayed within the building entrance requesting that customers are mindful of the need to refrain from noisy activities such as loud talking, shouting, slamming car doors and playing loud music when entering, but particularly when leaving the building;
  - iii. The notices will also request that when cars arrive to pick up customers their engines should be turned off and no loud music is emitted;
  - iv. Staff will be mindful of the need to avoid customers or others gathering outside the premises causing unacceptable disturbance to local residents, and will take appropriate action as necessary;



- v. Staff will encourage the gradual dispersal of customers to minimise disturbance;
- vi. Direct contact will be made with taxi drivers to prevent anti-social behaviour such as sounding horns and slamming doors;
- vii. Contact will be made with the Chair of the Marsh Committee Forum with a view to members of the group being advised of the contact number(s) to be used by local residents should they have a complaint either during or at any time after a cause for concern;
- viii. Deliveries of goods and collection of waste will only be undertaken between 0800 and 1800 hours Mon-Fri and between 0900 and 1700 hours Saturdays (no deliveries Sundays or Bank Holidays) to avoid causing disturbance to nearby residents;
- ix. Staff will be instructed to react quickly and appropriately to any complaint of noise or anti-social behaviour including advising the duty manager;
- x. A record of any complaint and of action taken will be recorded for future reference;
- xi. All staff will be made aware of this noise management plan;
- xii. The noise management plan will be reviewed as considered necessary in the light of any comments or complaints received

10.15 The Environmental Health Officer considers the Noise Management Plan to be acceptable and has no objection to the variation of condition being granted with this Plan in place. Planning Officers' observations are that the Noise Management Plan contains a suitable level of detail, and it appears likely to achieve its aim of preventing late-night noise from causing disturbance to residential properties in the vicinity.

10.16 There is inevitably some uncertainty about this, however, since in this instance the sources of noise that are cause for concern are those arising from customer behaviour (and that of other third parties such as taxi drivers), and it is therefore difficult to predict how effective the plan will be at controlling these. This depends upon factors such as how effectively staff enforce the rules set out the Noise Management Plan as well as customers' willingness to comply with them. In cases where the main sources of noise are electronic or mechanical (such as amplified music or fixed plant) the solution is usually a purely technical matter.

10.17 As the operation of Playworld has not yet been undertaken with the Noise Management Plan in place/within authorised extended hours under a planning permission there is a degree of uncertainty over the effectiveness of the Noise Management Plan or whether the extended hours can operate without material detriment to the amenities of nearby residents. As a significant number of residential properties could potentially be affected, it is considered that it would be reasonable in the circumstances to allow the change in hours, in the first instance, for a limited period of 6 months. This would allow the effectiveness of the control measures to be monitored. If, subsequently, the management of Playworld wish to permanently extend the hours, then towards the end of this

period they would have the option of re-applying for a permanent extension of hours. There would then be the option of granting a permanent variation in hours if, based on the available evidence, the Noise Management Plan had been successful in preventing unacceptable levels of late-night noise.

- 10.18 The hours of delivery specified in the earlier Noise Management Plan were longer than those specified in the original Condition (6) (which cannot be varied under the terms of the current application). The applicant's agent has subsequently confirmed that his client will adhere to the delivery hours as originally conditioned and this has been incorporated into the updated version of the Noise Management Plan.
- 10.19 To conclude, it is considered that this approach would represent a pragmatic solution which would safeguard the amenities of local residential properties and ensure that they are not subject to undue levels of noise or anti-social behaviour, whilst providing an opportunity for an established business to develop and would accord with the aims of LP16(b), LP52 and 24(b), as well as those of Chapters 8, 15 and 12 of the NPPF.

#### Highway issues

- 10.20 The premises benefit from the use of a large private car park, which, based on observations both on site and from aerial photographs held by Kirklees Council, appears to have spare capacity at most times. There are two alternative access points to the car park. One is off Westbourne Road and is substandard owing to its width and limited footway provision; the other, off Syringa Street, is wider and has far better visibility. The proposal does not involve the creation of a new access or modification to any existing one, and it is considered very unlikely that it would lead to a larger number of vehicle movements, or greater demand for parking, at peak times, than occurs at present.
- 10.21 A car park management plan was submitted as part of application 2014/90523 which specified that 8 spaces would be designated for shoppers with maximum 1 hour stay, no return within 2 hours, no parking for taxis or commercial vehicles. It is considered that this can be carried forward as a prescriptive condition to this application. It is therefore considered that the proposal raises no concerns for highway or pedestrian safety (including users of the Public Right of Way that crosses the site) or for parking availability, and would accord with the aims of LP20-22 of the Local Plan.

#### Representations

- 10.22 Concerns relating to residential amenity have been examined in the main part of the assessment but are highlighted here with other issues raised and officer responses.
- 10.23 Representations in opposition:
- i. Noise arising from late night drinking.
  - ii. Possible increase in anti-social behaviour especially from people leaving the venue late at night.

**Response (i-ii):** It is considered that the Noise Management Plan submitted by the applicant provides a reasonable degree of confidence that the premises will

be able to operate with the extended hours without giving rise to late night noise disturbance or anti-social behaviour. The 6-month period to allow it to be monitored is considered to represent a pragmatic solution that will safeguard amenity.

iii. Noise from amplified music is already a problem;

**Response:** Based on Environmental Health comments and taking into account the granting of a Premise License for extended hours, it is considered that it would not be possible to substantiate a refusal on such grounds at present. In the event of amplified music from within the premises being played at an inappropriate volume, this could be addressed by Environmental Health under statutory nuisance powers or the Licensing Authority. Complaints received during the trial period would be considered in a subsequent application seeking to permanently retain the extended opening hours.

iv. Light pollution;

**Response:** The proposal now under consideration does not involve any new outdoor lighting. If concerns relate to light pollution arising from car headlights it is considered that this would not provide a valid or justifiable reason to refuse the application.

v. Parking and traffic problems

**Response:** As previously stated, it is considered that the proposed extension of hours would not result in an intensification of the use or lead to a greater number of vehicle movements or a greater peak demand for parking, than currently exists.

vi. It is unnecessary as the pub next door provides these facilities.

**Response:** Perceived lack of need for a development is, in general, not a material planning consideration and it would not be possible to substantiate a refusal on such grounds.

vii. Red line boundary is wrong – it should only include the original application site.

**Response:** The case officer has checked the red line boundary as plotted on the mapping system used by Kirklees Council and is unable to detect any discrepancy with the red line as originally plotted. A Section 73 application does not require the submission of a site location plan as it relates to the original application site boundary.

viii. The original planning appeal decision on the 2012 application allowed hours of use to be no later than 2330 Mon-Fri and midnight on Saturdays Sundays and Bank Holidays. The subsequent application 2013/92338 allowed no later than 2100 on any night. These should be treated as material considerations; however, the roller disco use is noisier than the restaurant use that was successfully appealed.

**Response:** This is correct regarding the approved hours of use on permission 2012/91978. The approved hours for the subsequent application were no later than 2100 on any night, but these were also the hours that the applicant specified on the application form, presumably because at that stage they did not intend to open any later. This permission however cannot be treated as binding upon future applications.

ix. Safety issues – have they installed an appropriate fire door?

**Response:** The Planning system should not seek to duplicate controls that are in place under other regimes of control, and in this case the concern raised would fall within the remit of the Building Regulations.

x. There are already too many hot food takeaways in Marsh which give rise to litter.

**Response:** The existing use does not have permission to operate as a hot food takeaway. Since the sale of hot food for consumption on the premises is one of the activities undertaken, limited off-sales may be allowed to take place without it amounting to a material change of use. If the sale of hot food for consumption off the premises becomes a significant element, then this may amount to an unauthorised change of use and could be vulnerable to enforcement action.

#### 10.24 Other comments:

i. We would broadly support the Environmental Health Officer's comments of 31<sup>st</sup> October 2022. However, as the proposed hours of use are untested, we would suggest a temporary consent for a period of 12 months within which the unit must operate at full opening hours to properly ascertain noise impact, and should be limited to those imposed by the Inspector (09:00 to 23:30 Monday to Friday and 09:00 to 00:00 on Saturday's Sundays and Bank Holidays).

**Response:** It is considered that in this instance a test period of 6 months would be sufficient, balancing the request of the business with the amenities of nearby residents.

ii. We would encourage imposition of a condition which ensures that ensures that windows and doors are closed at all times, with the exception of persons accessing and egressing from the property. To avoid increase in noise and disturbance caused by virtue of the extended opening hours.

**Response:** Condition (7) on the 2013 permission states that a report specifying the measures to be taken to protect the occupants of nearby noise-sensitive properties from noise be submitted to and approved by the Local Planning Authority before development commences. Application 2014/90523 sought to discharge a number of conditions including this one. A noise report was submitted, at officers' request, which made several recommendations on noise levels, including the volume of amplified music, and, in order for noise break-out to be limited and therefore controlled, any outer door(s), should be kept closed during amplified music. It did not say that this measure was necessary for windows. In terms of the information submitted at that time and following recent discussion on this point between the case officer and the Environmental Health Officer it is considered these concerns can be adequately covered by prescriptive conditions and that further information will not be required.

iii. A condition restricting the use to inside the building only would also be welcomed.

**Response:** There is no existing external area for customer seating, customer service, or for the carrying on of any kind of recreational activities. Any such activities outside the building would therefore be unauthorised and could be enforced against. Such a condition would therefore serve no planning purpose.

## Other Matters

- 10.25 The proposed development is not considered to raise any other material planning issues.

## Conditions

- 10.26 Since a permission granted under Section 73 (Variation of Condition) has the effect of superseding the original permission, all conditions from the original permission should normally be carried over to the new permission, unless they are superseded, unenforceable, or are deemed to be unnecessary for other planning reasons. In some cases, they may require re-wording as prescriptive conditions rather than conditions requiring further information to be submitted and approved.

- 10:27 The conditions attached to the original permission no. 2013/92338 are as follows:

1. The development hereby permitted shall be begun within three years of the date of this permission.

**Development has been begun, no longer necessary**

2. The development hereby permitted shall be carried out in complete accordance with the plans and specifications listed in this decision notice, except as may be specified in the conditions attached to this permission, which shall in all cases take precedence.

**Still relevant, re-impose**

3. The development shall not commence until a scheme detailing the surfacing, drainage, marking out, of the car park, has been submitted and approved in writing by the Local Planning Authority. The development shall not be brought into use until the approved scheme has been fully implemented. Thereafter, the fully implemented scheme shall be retained throughout the lifetime of the development.

**Reason:** In the interests of highway safety and to accord with policies D2, T10 and T19 of the Kirklees Unitary Development Plan. **Car park layout etc submitted with discharge of condition ref 2014/90523. No concerns have been raised regarding the surfacing or marking out of the car park. Re-impose as a prescriptive condition requiring the car park to be retained surfaced and marked out.**

4. The development shall not commence until a scheme detailing a car park management plan has been submitted and approved in writing by the Local Planning Authority. The scheme shall include: details of how the car park will operate for both users of the hereby approved D2 assembly and leisure use and by users of the Marsh local centre; details of how parking enforcement measures will operate for the car park, including specific details of any signage. The development shall not be brought into use until the approved scheme has been fully implemented. Thereafter, the implemented scheme shall be retained throughout the lifetime of the development.

**Reason:** In the interests of highway safety and to accord with policies D2, T10 and T19 of the Kirklees Unitary Development Plan. **Car park management plan submitted with discharge of condition ref 2014/90523, re-impose as prescriptive condition.**

5. The use hereby permitted shall not be open to customers outside the hours of 09:00 to 21:00 Monday to Sunday.

**Subject of the application before Members, to amend for a 6-month trial period.**

6. There shall be no deliveries to or dispatches from the premises outside the times of 08:00 to 18:00 Monday to Friday and 09:00 to 17:00 Saturdays. No deliveries or dispatches shall take place on Sundays or Bank Holidays.

**Reason:** In the interests of residential amenity and to accord with Policies D2 and EP6 of the Kirklees Unitary Development Plan and Policies in the National Planning Policy Framework. **Still relevant, re-impose. The revised Noise Management Plan adheres to the specified hours.**

7. Before development commences a report specifying the measures to be taken to protect the occupants of nearby dwelling houses in the vicinity of the premises from noise from the proposed development shall be submitted to and approved in writing by the LPA. The report shall include

1. an assessment of noise emissions from the proposed development
2. details of background and predicted noise levels at the boundary of the premises a written scheme of how the occupants of dwellings in the vicinity will be protected from noise from the proposed development with noise attenuation measures as appropriate

The development shall not be brought into use until all works comprised within the measures specified in the approved report have been carried out in full and such works shall be thereafter retained.

**Reason:** In the interests of residential amenity and to accord with Policies D2 and EP6 of the Kirklees Unitary Development Plan and Policies in the National Planning Policy Framework.

**A Noise Assessment was submitted with discharge of condition ref 2014/90523. The Noise Assessment (ref. DYN310314\_2A/1) contained several recommendations, including amplified noise being controlled to 10dB below the existing background noise level, and that doors should have suitable sealed, be self-closing, and not be pinned open when amplified music is being played. It also makes recommendations concerning fixed plant (the air conditioning units) including construction of an acoustic screen and noise attenuator. The Environmental Health Officer recommends that the most effective course of action in respect of the carrying forward of the requirements of this application would be to replace the original condition 7 with two standard prescriptive conditions, which will state that noise from amplified music and from fixed plant must be inaudible at noise-sensitive premises.**

8. The use hereby permitted shall not begin until details of the installation and/or erection of any extract ventilation system, including details of the methods of treatments of emissions and filters to remove odours and control noise emissions have been submitted to and approved in writing by the Local Planning Authority. The use permitted shall not commence until the works specified in the approved scheme have been fully implemented. Such works shall thereafter be retained and operated at all times when the hereby

approved D2 assembly and leisure and ancillary café is in use and maintained in accordance with the manufacturer's instructions.

**Still relevant, re-word to state that 'no extract ventilation systems to be installed unless details have been submitted and approved'.**

9. Before development commences a scheme which indicates the measures to be taken for the control of any glare or stray light arising from the operation of artificial lighting within the area outline in red on the submitted location plan shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the artificial lighting shall be operated in accordance with the approved scheme.

The scheme should include the following information:-

- 1) The proposed design level of maintained average horizontal illuminance for the site.
- 2) The predicted vertical illuminance that will be caused by lighting when measured at windows of any properties in the vicinity.
- 3) The proposals to minimise or eliminate glare from the use of the lighting installation
- 4) The proposed hours of operation of the lighting

**Still relevant, re-impose, worded as "no outdoor lighting shall be installed unless details have been submitted and approved"**

10. Notwithstanding the provisions of section 55(2)(a)(i) of the Town and Country Planning Act 1990 (or any re-enactment with or without modification) no mezzanine floor shall be inserted in the building outlined in red on the hereby approved location plan.

**Prescriptive condition, re-impose**

11. The bin storage for the hereby approved development shall only be located along the southern elevation of the application building as indicated on the floor plan submitted on 13 September 2013. The bins shall remain positioned in this location free of obstructions and available for storage throughout the lifetime of the development.

**Prescriptive condition, re-impose.**

12. The development shall not be brought into use until a scheme of details for secure cycle parking spaces have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the details approved, and the approved facilities shall thereafter be retained free of obstructions and available for cycle parking throughout the lifetime of the development.

**Details previously approved under discharge of condition no. 2014/90523, re-impose as a prescriptive condition.**

13. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification) no development within Schedule 2 Parts 3 or 4 is permitted.

**Prescriptive condition, re-impose but update the wording to refer to the requirements of the 2015 General Permitted Development Order.**

## 11.0 CONCLUSION

- 11.1 It is considered that the extension of hours, for a trial period, would not have any negative impact upon visual amenity nor upon the safe or convenient use of the highway. The submitted Noise Management Plan, it is considered, would provide a degree of certainty that the established use may be able to operate with the proposed extended hours without giving rise to an adverse impact on residential amenity.
- 11.2 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, subject to the extended hours being permitted for a limited period of 6 months in the first instance to allow their impact to be monitored, would constitute sustainable development and it is therefore recommended for approval.

## 12.0 CONDITIONS (Summary list. Full wording of conditions including any amendments/additions to be delegated to the Head of Planning and Development)

1. The development hereby permitted shall be carried out in complete accordance with the plans and specifications listed in this decision notice, except as may be specified in the conditions attached to this permission, which shall in all cases take precedence.
  2. car park to be retained surfaced and marked out.
  3. Car park management plan submitted with discharge of condition ref 2014/90523 to be adhered to.
- 4a. Except for the circumstances referred to in condition 4b, the use hereby permitted shall not be open to customers outside the hours of 09:00 to 21:00 on any day.  
**Reason:** In the interests of preventing loss of amenity to adjoining residential properties arising from noise disturbance and to accord with the aims of Policies 16(b), 24(b) and 52 of the Kirklees Local Plan and Chapters 8, 12 and 15 of the National Planning Policy Framework.
- 4b. Notwithstanding the requirements of condition 4a, for a 6-month trial period commencing from (date decision issued) the use hereby permitted shall not be open to customers outside the hours of:  
Friday 09:00 to 00:30 hours Saturday,  
Saturday 09:00 to 00:30 hours Sunday,  
Sunday to Thursday 09:00 to 23:15 hours on each day  
At the end of the 6-month trial period condition 4b shall expire and condition 4a shall thereafter apply in its entirety.  
**Reason:** To allow any possible impacts of the variation in hours to be assessed during this period in the interests of preventing loss of amenity to adjoining residential properties arising from noise disturbance and to accord with the aims of Policies 16(b), 24(b) and 52 of the Kirklees Local Plan and Chapters 8, 12 and 15 of the National Planning Policy Framework.



5. There shall be no deliveries to or dispatches from the premises outside the times of 08:00 to 18:00 Monday to Friday and 09:00 to 17:00 Saturdays. No deliveries or dispatches shall take place on Sundays or Bank Holidays.
6. Noise from amplified music must be inaudible at noise-sensitive premises.
7. Noise from fixed plant must be inaudible at noise-sensitive premises
8. No extract ventilation systems to be installed unless details have been submitted to and approved by the Local Planning Authority.
9. No outdoor lighting shall be installed unless details have been submitted to and approved by the Local Planning Authority.
10. No mezzanine floor shall be inserted in the building outlined in red on the hereby approved location plan.
11. The bin storage for the hereby approved development shall only be located along the southern elevation of the application building as indicated on the floor plan submitted on 13 September 2013. The bins shall remain positioned in this location free of obstructions and available for storage throughout the lifetime of the development.
12. Approved cycle storage spaces to be retained in accordance with details approved under discharge of condition no. 2014/90523.
13. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no development within Schedule 2 Parts 3 or 4 is permitted.
14. Use to be carried out in strict accordance with the Noise Management Plan by Malcolm Sizer submitted February 2023.

### **Background Papers:**

Application and history files.

[Planning application details | Kirklees Council](https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2022%2F93158)  
<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2022%2F93158>

Certificate of Ownership A completed.