



Appeal Decision

Site visit made on 18 March 2025

by **C Skelly BA (Hons) MSc MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24 April 2025

Appeal Ref: APP/Z4718/W/24/3355827

Devour Woodland Mills, Luke Lane, Thongsbridge, Holmfirth, West Yorkshire, HD9 7TB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
- The appeal is made by Paul Robinson of D and LS Developments against the decision of Kirklees Metropolitan Council.
- The application Ref 2022/70/92015/W was approved on 14 October 2024 and planning permission was granted subject to conditions.
- The development permitted is change of use, alterations and extensions to former mill buildings to form mixed use development comprising of food manufacturing, cookery school, café, shop, restaurant, cooking demonstration/tasting area and management offices/suite. Outdoor seating areas, service yard, parking and associated landscaping works.
- The condition in dispute is No 6 which states that: The hereby approved development shall operate in accordance with the following hours of use: Northern Building: 0900 to 2300 any day of the week; Southern Building: 1000 to 2230 any day of the week; Deliveries or dispatches to or from the site: 0730 to 2000 Monday to Friday; 0800 to 1800 Saturdays and no deliveries Sundays and Bank Holidays.
- The reason given for the condition is: So as not to detract from the amenities of nearby residents and to accord with Policies LP24 and LP52 of the Kirklees Local Plan, policies 1 and 2 of the Holme Valley Neighbourhood Development Plan and policies contained within Chapter 15 of the National Planning Policy Framework.

Decision

1. The appeal is allowed and planning permission for change of use, alterations and extensions to former mill buildings to form mixed use development comprising of food manufacturing, cookery school, café, shop, restaurant, cooking demonstration/tasting areas and management offices/suite. Outdoor seating areas, service yard, parking and associated landscaping works at Devour Woodland Mills, Luke Lane, Thongsbridge, Holmfirth, West Yorkshire, HD9 7TB granted on 14 October 2024 by Kirklees Metropolitan Council, is varied by deleting condition 6 and substituting for it the following condition:

The hereby approved development shall operate in accordance with the following hours of use:

Northern Building: 09.00 hours to 23.30 hours any day of the week

Southern Building: 10.00 hours to 22.30 hours any day of the week

Deliveries or dispatches to or from the site:

07.30 hours to 20.00 hours Monday to Friday, 08.00 hours to 18.00 hours Saturdays and no deliveries Sundays and Bank Holidays.

Preliminary Matters

2. There was a previous appeal decision¹ (the previous appeal), which in accordance with case law is a material consideration as it is necessary to have consistency in decision making.

Background and Main Issue

3. The appeal site is a former mill building, referred to as the Northern Building, which has been converted to accommodate a restaurant. On the opposite side of the appeal site is the converted Royd Mill in residential use, with further residential properties located along Luke Lane.
4. Permission was granted under LPA Ref. 2017/62/91888/W on 21 December 2017 for the change of use, alterations and extensions to former mill buildings to form mixed use development comprising of food manufacturing, cookery school, café, shop, restaurant, cooking demonstration/tasting areas and management offices/suite. Outdoor seating areas, service yard, parking and associated landscaping works. Condition 15 restricted the operating hours of the approved development. Since this initial grant of permission there have been numerous applications to vary or discharge the provisions of planning conditions attached to this permission, including those relating to operating hours.
5. The application that is the subject of this appeal sought to vary condition 15 of the original permission for the development granted on 21 December 2017 (ref 2017/62/91888/W) in order to allow the Northern Building to open until 23.30 hours every day of the week. The appeal has been made because although the Council agreed to the application, the condition (No 6) attached to the new permission that was created only allowed the building to stay open until 23.00 hours each day. Therefore, given the appeal was lodged directly following the grant of the newly created permission (ref 2022/70/92015/W), this appeal seeks to delete condition 6 and replace it with a modified version that changes the daily closing time for the Northern Building to 23.30 hours.
6. Accordingly, the main issue is the effect of the variation of the proposed modified condition to extend the operating hours of the Northern Building on the living conditions of neighbouring residents with particular regard to noise and disturbance.

Reasons

7. A Restaurant Noise Management Plan² (RNMP) was submitted as part of the application. The Council's Environmental Health Team were satisfied with the submitted information and had no objections to the proposed variation in operating hours up until 23.30hrs each day. Condition 13 of the permission that was subsequently granted requires that the restaurant is operated in accordance with this plan.
8. The Council's statement indicates that the operating hours condition remains necessary, however the proposed additional 30 minutes opening time to 23.30hrs would be considered acceptable. This information was shared by the Council with the appellant.

¹ APP/Z47718/W/20/3263244

² 20 September 2024

9. A third party has raised concerns about the impact of the proposal in relation to noise and vehicle movements on neighbouring residents. However, I note that the business has been operating for 3 years and any complaints received in relation to the operation of the site during this time have been considered by the Council's Environmental Health Team in reaching their conclusions.
10. A previous Inspector dismissed an appeal³ to extend the opening hours of the Northern Building. However, in that appeal permission was sought to open until later in the night. Moreover, since then the appellant has thoroughly reviewed and verified noise monitoring in relation to the use of the Northern Building. The Council has no objection to the findings of the monitoring that noise levels would not adversely affect the living conditions of nearby residents, subject to use of the RNMP. As a result, the circumstances of this appeal are materially different to those of the previous appeal.
11. The noise mitigation measures in the RNMP include signs warning staff and customers to be quiet when leaving the premises. The RNMP also encourages use of a designated taxi company with pick-ups occurring in a designated area by the rear entrance, which is a suitable distance from nearby residential properties. These measures would mitigate any potential noise disturbance from car doors banging, cars starting up, radios playing and people conversing. In the absence of any substantive evidence to the contrary, I am satisfied that the proposed mitigation measures would be sufficient to ensure that the extension of the operating hours of the Northern Building to 23.30 hours would not cause harm to the living conditions of the occupiers of neighbouring properties regarding noise and disturbance.
12. Hence, the proposal would not conflict with Policies LP24 and LP52 of the Kirklees Local Plan Strategies and Policies (2019). These policies seek to ensure that development has an acceptable impact on the amenity of neighbouring occupiers by evaluating potential pollution and, where necessary, incorporating necessary mitigation measures.

Conclusion

22. For the reasons given above I conclude that the appeal should succeed. I will alter the permission by removing condition 6 and replacing it with a modified version that allows the Northern Building to open until 23.30 hours daily.

C Skelly

INSPECTOR

³ APP/Z47718/W/20/3263244

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with drawing nos:
Noise Assessment dated 10th June 2022, 13th June 2022
Planning Statement, 13th June 2022
Addendum to Noise Impact Statement, 27th July 2022
Restaurant Noise Management Plan, 23rd September 2024
Location Plan, 3124(OS)01, 15/6/2017
Workshop plans and elevations as existing, 3124(0-)11, 15/6/2017
Existing site sections, 3124(0-)07 15/6/2017
Dyehouse plan and elevations as existing, 3124(0-)10, 15/6/2017
Floor plans as existing, 3124(0-)02, 15/6/2017
Site plan as existing, 3124(0-)01, 15/6/2017
Topographic survey, 7408/1, 15/6/2017
Overall Masterplan as proposed, 3124(0-)100, Rev D, 10/11/2017
Proposed Elevations 1-3 3124(0-)120, Rev E, 10/11/2017
Proposed Elevations 4- 73124(0-)121, Rev E, 10/11/2017
Proposed Elevations, 8-10124(0-)122, Rev R, 10/11/2017
Ground Floor Site Plan as proposed, 3124(0-)101, Rev C, 7/11/2017
Level 0 – Plan as proposed, 3124(0-)110, Rev H, 7/11/2017
Level 1 – Plan as proposed 3124(0-)111, Rev G, 10/11/2017
Level 2 – Plan as proposed 3124(0-)112, Rev E, 10/11/2017
Level 3 – Plan as proposed 3124(0-)113, Rev C, 10/11/2017
Proposed Access and Visibility Plan, 9863/003, 7/11/2017
Design and Access Statement, 3124, May 2017, 15/6/2017
Planning Policy Statement, 15/6/2017
Retail Sequential Assessment, 15/6/2017
Devour Business Plan
Arboricultural Survey May 2017, 15/6/2017
Arboricultural Method Statement May 2017, 15/6/2017
Bat, Otter and Water Vole Surveys, 940-05, September 2017, 8/9/2017
Preliminary Ecological Appraisal March 2017, 15/6/2017
Ecology Covering Note 940-210917-TF/NW, 22/9/2017
Ecology Statement, 16/10/2017
Phase 1 Desktop Contaminated Land Study Report, 16-1086, 15/6/2017
Flood Risk and Drainage Assessment, R4692, 15/6/2017
Transport Statement, 9863//001/05, 8/9/2017
Additional Transport Statement 1, 9863-004, 7/11/2017
Additional Transport Statement 2, 9863-004, 10/11/2017
- 2) The external facing and roofing materials shall be in accordance with those set out within the letter sent by the Local Planning Authority dated 14th March 2018 submitted as part of application 2018/90205 and retained thereafter.
- 3) The cycle storage shall be in accordance with those set out within the letter sent by the Local Planning Authority dated 14th March 2018 submitted as part of application 2018/90205 and retained thereafter.
- 4) The ecological design strategy shall be in accordance with that set out within the letter sent by the Local Planning Authority dated 25th June 2018 submitted as part of application 2018/90205 and retained thereafter.
- 5) The containment, control and removal of Japanese Knotweed and Himalayan Balsam shall be in accordance with those set out within the letters dated 28th

May 2019 and 12th July 2018 submitted as part of application 2018/90205. And retained thereafter.

- 6) The hereby approved development shall operate in accordance with the following hours of use:
 - Northern Building: 09.00 to 23.30 hours any day of the week
 - Southern Building: 10.00 to 22.30 hours any day of the week
 - Deliveries or dispatches to or from the site: 07.30 to 20.00 hours Monday to Friday, 08.00 to 18.00 hours Saturdays and no deliveries Sundays and Bank Holidays
- 7) Before the installation of any external plant such as air condition units, cooling units etc at the site outlined in red on the hereby approved plan Dwg. No. 3124(OS)01, details of said plant shall be submitted to and approved in writing by the Local Planning Authority. The submitted details shall set out the need for the additional plant, its siting, appearance and the predicated noise levels that would be generated through its operation. The additional plant shall thereafter operate in accordance with the approved details and be maintained and in accordance with the manufacture's recommendations.
- 8) Notwithstanding the details set out on plan Dwg. No. 3124(0-)-120 Rev E the southern building shall not be brought into use until all windows in the north eastern elevation of the southern building have been fitted with obscure glazing, minimum grade 4. Notwithstanding the provisions of section 55(2)(a)(ii) of the Town and Country Planning Act 1990 and the Town and Country Planning (General Permitted Development) Order 2015 (or any other Order revoking or re-enacting that Order with or without modification) the window shall thereafter be so retained obscure glazed.
- 9) All electric vehicle charging infrastructure shall be in accordance with that set out within the letter dated 14th March 2018 submitted as part of application 2018/90205 and retained thereafter.
- 10) Within the site outlined in red on the hereby approved plan Dwg. No. 3124(OS)01, A1 (retail) floorspace shall not exceed a total of 250 square metres of the development.
- 11) No building or other obstruction shall be located over or within 3.0 (three) metres either side of the centre line of the water main which crosses the site.
- 12) The applicant shall sign up to the Environment Agency's flood warning system 'Floodline Warnings Direct'.
- 13) The development hereby approved shall be undertaken in accordance with the measures set out within the submitted document titled 'Restaurant Noise Management Plan' received on 23rd September 2024.

End of schedule