

<u>APPLICATION NO:</u>	25/00587/CLD	<u>CASE OFFICER:</u>	Lee Osborne
<u>WARD:</u>	Whitefield	<u>PARISH:</u>	
<u>LOCATION:</u>	Morrisons Petrol Filling Station Unit 16, Irlam Drive, Kirkby Town Centre		
<u>PROPOSAL:</u>	CERTIFICATE OF LAWFULNESS FOR EXISTING SERVICE STATION TO BE OPEN 24 HOURS		

Site Description

This application relates to a petrol filling station (PFS) in Kirkby Town Centre. The PFS is bounded by Irlam Drive to the south-east, and County Road on the north-eastern boundary of the PFS; there is no vehicular or pedestrian access from County Road. Morrisons supermarket is on the opposite side of the car park to the south-west, and a McDonald's Drive-Thru restaurant bounds the PFS to the north. The PFS is accessed from the main distributor road within the car park off Irlam Drive.

Proposal

The application has been submitted under S192 of the Town and Country Planning Act (The 1990 Act). The original building was granted planning permission as part of the Kirkby Town Centre redevelopment scheme in November 2017. This application seeks confirmation that the PFS can operate on 24 hours a day basis lawfully without the need for a separate planning application approval.

Representations

NA

Relevant Planning History

17/00395/DEMCON - DEMOLITION OF EXISTING RETAIL AND LEISURE BUILDINGS. Granted: 19.06.2017.

17/00559/FUL - ERECTION OF A MIXED-USE DEVELOPMENT, COMPRISING A FOODSTORE AND NON-FOOD RETAIL SHOPS (USE CLASS A1), FOOD & DRINK AND LEISURE USES (USE CLASSES A3/A5/D2), PETROL FILLING STATION, CAR PARKING, LANDSCAPING, HIGHWAY IMPROVEMENTS AND OTHER ASSOCIATED WORKS (INCLUDING 3 NO. ELECTRICITY SUBSTATIONS) ON LAND BOUND BY NORWICH WAY, HALL LANE, COUNTY ROAD AND IRLAM DRIVE; AND THE CONSTRUCTION OF A CAR PARK TOGETHER WITH ASSOCIATED WORKS ON LAND OFF CHERRYFIELD DRIVE AND CHERRYFIELD CRESCENT. Granted: 09.11.2017.

Relevant Policy

The application is made under S192 of the Town and Country Planning Act 1990 (as amended).

An application under S192 seeks to establish whether:

- a) Any proposed use or building on land; or
- b) Any operations to be carried out on, over or under land, would be lawful.

S192 (2) sets out that if an application under this section the Local Planning Authority is provided with information satisfying that the use or operations described in the application would be lawful if instituted or begun at the time of the application they shall issue a certificate to that effect.

In determining an application the Local Planning Authority must consider whether the proposed use (or hours of operation in this case) would be lawful having regard to any planning controls and any relevant planning history. The assessment is confined to matters of lawfulness and does not consider the planning merits of the proposal.

Assessment

Planning permission 17/00559/FUL granted consent for the redevelopment of a large part of Kirkby Town Centre, within which the petrol filling station the subject of this application for a certificate of lawful development was identified as Unit 16. The decision notice pertinent to planning permission 17/00559/FUL included a condition restricting the hours of operation of Unit 14 unless previously approved acoustic mitigation measures were in place (Condition 24). No other units were restricted in hours of operation by condition. There is therefore no condition which specifically restricts the hours of operation of the petrol filling station (Unit 16).

In considering an application for a Certificate of Lawful Development the local planning authority is required to assess whether the proposed use would be lawful having sole regard to relevant legislation and planning history where applicable. The assessment is not concerned with the planning merits of the development, including issues such as residential amenity, noise or disturbance which are not matters for determination under Section 192 of the Town and Country Planning Act 1990. No planning condition, informative or planning obligation has been identified that restricts the hours of operation of the petrol filling station unit. Where planning permission is granted for a development/use without an express condition controlling hours of operation the authorised development/use may operate at any time, day or night.

The planning permission for the petrol filling station therefore stands without any limitation on hours of use. In planning terms, where a use is granted without an express condition restricting hours of use/operation that use may operate at any time. The absence of a condition restricting hours means that the use is not limited in this respect, and therefore there is no planning limitation preventing 24-hour operation.

The application seeks confirmation that the petrol filling station may operate on a 24-hour basis. This does not amount to a material change of use or development beyond that previously permitted but clarifies the scope of the planning permission. There is no planning condition that would prevent the petrol filling station unit from operating 24 hours per day.

On this basis it is considered that the proposed 24-hour operation of the petrol filling station unit would be lawful and in accordance with the extant planning permission.

Conclusion

In the absence of any planning condition restricting hours of operation the petrol

filling station unit (Unit 16) may lawfully operate on a 24-hour basis. The application therefore satisfies the requirements of Section 192 of the Town and Country Planning Act 1990, and a Certificate of Lawful Development should accordingly be issued.

Recommendation

The Local Planning Authority is satisfied that for the purposes of Section 192 of the Town and Country Planning Act 1990 the petrol filling station unit may lawfully operate on a 24-hour basis and that a Certificate of Lawful Development should be granted.

SCHEDULE 1

Date Received	Ref. No	Version	Drawing/Document Title
30/10/2025	25970-44	-	LOCATION PLAN
30/10/2025	-	-	PLANNING STATEMENT

Signed Case Officer¹: Lee Osborne

Signed Authorising Officer²: Jo Sheridan

Date: 08/01/2025

Informatives

1. This Certificate confirms the lawfulness of the proposed hours of operation for planning purposes only. It does not remove the need to comply with any other statutory requirements or controls.
2. This Certificate does not remove the requirement that deliveries shall only take place between the hours of 07.00 and 23.00 hours only in accordance with Condition 18 of planning permission 17/00559/FUL.

¹ I confirm that I do not have a personal relationship with the applicant, agent or other interested parties; I also confirm that I do not have a financial interest in the site or the development proposed

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