KIRKLEES METROPOLITAN COUNCIL
INVESTMENT & REGENERATION SERVICE

DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended) – SECTION 70

DELEGATED DECISION TO DETERMINE PLANNING APPLICATIONS

Reference No:	2018/62/90320/W
Site Address:	29, Clay Butts, Birkby, Huddersfield, HD2 2FW
Description:	Change of use of dwelling to mixed use dwelling and catering business
Recommending Officer:	William Simcock

DECISION – conditional full permission

I hereby authorise the approval of this application for the reasons set out in the officer's report and recommendation annexed below in respect of the above matter.

Teresa Harlow

AUTHORISED OFFICER

Date: 01-May-2018

Officer Report

Site Description

29 Clay Butts is a link-detached dwelling on a modern housing estate. It is situated on the north side of the highway at the head of a cul-de-sac. Clay Butts continues to the east to join the main highway network. The dwelling has an attached single garage at the side and a single-width driveway some 20m in length. The surrounding houses are semi-detached or detached dwellings.

Description of Proposal

The proposal is for the change of use of the dwelling to a mixed use comprising residential and catering. No physical alterations are proposed. It is proposed that the existing kitchen will be used.

History of negotiations/amendments received

None.

Relevant Planning History

2017/91235 – Proposed change of use of property to mixed use comprising dwelling and catering (meals on wheels service) approved for 12-month period. Expires 21st June. Sub-committee decision based on “significant local objection”.

Representations

Final publicity date expires: 15-Mar-2018. 5 letters received from local residents raising objections or comments.

A summary of the comments received is set out below:

- Inappropriate in a residential area.
- The application is different because it does not specify cooking periods and is now purely commercial with no mention of meals on wheels or donations to charity;
- The business may expand even further.
- Cooking odours.
- Insufficient time for a review.
- If it is to continue, an extraction system and flue should be installed.
- Has anyone checked the kitchen layout?
- Access and traffic issues, causing danger to wildlife and urbanisation of the area.
- No site notices posted.

- Increased fire and accident risk in kitchen.
- Insufficient storage space.
- Other errors or omissions on the application form.
- Increase in waste.
- It is against the terms of the lease.

Consultation Responses

The following is a brief summary of Consultee advice (more details are contained in the Assessment section of the report, where appropriate):

- Environmental Services. No objections.
- Highways. No objections.

Policy

The statutory development plan comprises the Kirklees Unitary Development Plan (saved Policies 2007).

The statutory development plan is the starting point in the consideration of planning applications for the development or use of land unless material considerations indicate otherwise (Section 38(6) Planning and Compulsory Purchase Act 2004).

The Council is currently in the process of reviewing its development plan through the production of a Local Plan. The Council's Local Plan was submitted to the Secretary of State for Communities and Local Government on 25th April 2017, so that it can be examined by an independent inspector. The Examination in Public began in October 2017. The weight to be given to the Local Plan will be determined in accordance with the guidance in paragraph 216 of the National Planning Policy Framework. In particular, where the policies, proposals and designations in the Local Plan do not vary from those within the UDP, do not attract significant unresolved objections and are consistent with the National Planning Policy Framework (2012), these may be given increased weight. At this stage of the Plan making process the Publication Draft Local Plan is considered to carry significant weight. Pending the adoption of the Local Plan, the UDP (saved Policies 2007) remains the statutory Development Plan for Kirklees.

The site is unallocated on the UDP Proposals Map and without designation on Kirklees Publication Draft Local Plan.

Kirklees Unitary Development Plan:

- D2 – Unallocated land
- T10 – Highway safety
- T19 – Parking provision.

Kirklees Publication Draft Local Plan (PDLP):

- PLP 1 – Presumption in favour of sustainable development
- PLP 21 – Highways and access
- PLP 22 – Parking
- PLP 52 – Protection and improvement of environmental quality.

National Policies and Guidance:

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 27th March 2012, together with Circulars, Parliamentary Statements and associated technical guidance.

The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications.

- Core Planning Principles
- Chapter 1 – building a strong, competitive economy – see 'facilitate flexible working practices such as the integration of residential and commercial uses within the same unit'
- Chapter 11 – Conserving and enhancing the natural environment

Assessment

The following matters are considered in the assessment below –

1) Principle of development
2) Impact on visual amenity
3) Impact on residential amenity
4) Impact on highway safety
5) Other matters
6) Representations
7) Conclusion

1 – Principle of development: The site is without notation on the UDP Proposals Map and Policy D2 (development of land without notation) of the UDP states "planning permission for the development … of land and buildings without specific notation on the proposals map, and not subject to specific policies in the plan, will be granted provided that the proposals do not prejudice [a specific set of considerations]". Other UDP Policies of relevance include EP4 (impact of noise-generating uses on noise-sensitive development to be considered at the planning stage). T10 and T19 (planning should not be granted where it create or materially add to highway safety problems, and developments should provide adequate parking within the site).

Paragraph 21 within Chapter 1 of the NPPF, "Building a strong, competitive economy" states that local planning authorities should facilitate flexible working practices such as the integration of residential and commercial uses within the same unit. Chapter 11, "Conserving and enhancing the natural environment", states that any possible implications for pollution, including noise, must be given due consideration during the planning process.

Policy PLP1 states that the Council will take a positive approach that reflects the presumption in favour of sustainable development in the NPPF and secure development that improves the economic, social and environmental conditions in the area, working pro-actively with applicants to find solutions. Policies PLP21, 22 and 52 of the Publication Draft Local Plan can in principle be given considerable weight but these essentially cover the same concerns as the UDP and NPPF policies set out above.

The proposal would in principle support the objectives of sustainable economic development, specifically those set out in Chapter 1 of the NPPF and PLP1 of the PDLP, subject to an assessment of amenity, environmental and highway safety issues, which will be examined later in this report along with any other material considerations.

2 –Impact on visual amenity: It is considered that the development has no implications for visual amenity as it would not involve any external alterations.

3 – Impact on residential amenity: Catering or the preparation of hot food has the potential to cause adverse impacts arising from food odours emanating from the premises. In general, the level of food aromas generated for even a small catering business could prove to be more intense than those generated by cooking family meals because it is likely quantities of food will be larger. This was one of the reasons that the 2017 permission was for a limited period to allow it to be monitored, although it was not originally the Environmental Health Officer who recommended the temporary permission, but the Highways Officer.

No complaints to Environmental Health have been made at any stage during the time period (by now, approximately 8 months) that the business has been operating under the temporary permission or during the process of the current application.

The description of the proposed use, as set out in part (3) of the application form, is in some ways different from that originally applied for, in that the description on the form suggests that it is to be mainly for commercial catering rather than meals-on-wheels. In planning terms, however, a change from a not-for-profit to a commercial operation does not in itself represent a material change of use. Under the original permission there were no limits on hours or on the type of customers who could be catered for and the applicant made it clear that it would not be exclusively meals-on-wheels but could involve catering for occasional on-off events as well. It is proposed, as before, that there will normally be two cooking sessions a day, one lunchtime and one early evening.

There would be very little opportunity for the applicants to intensify the use even if they wished to, as they only have the use of a small domestic-sized kitchen. The conditions on the original temporary permission specified that no

cooking appliances were to be installed anywhere other than in the existing kitchen and that any food storage in the garage in a fridge or freezer only. These can be re-imposed.

Noise should not be a significant issue unless there are callers at the premises or large numbers of vehicle journeys to and from the premises. At the time of the previous permission the applicant stated that there would be no vehicles calling at the premises to pick up meals, and that they would undertake 2 deliveries a day. Given that the use as now proposed would involve cooking twice a day as before, and still using the same domestic-sized kitchen, it seems very unlikely that this would change.

To sum up, it is considered that the use as described on the application form would not be materially different in scale or nature to the use originally applied for and granted a temporary permission. Given the small scale of the premises, the lack of objection from Environmental Health, and the lack of any formal complaints made to Environmental Health by any people living in the vicinity of the site, it is considered that the business is able to operate without causing loss of amenity arising from odours or noise, and that a permanent permission can be granted.

It should be noted that in the event of planning permission being granted, any odours causing loss of amenity can still be investigated under environmental health legislation and appropriate action taken.

This should be subject to the same conditions as on the previous permission, so as to ensure that it remains small-scale in the interests of residential amenity and highway safety:

- 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 order revoking or re-enacting that Act or Order with or without modification), no cooking appliances shall be installed in any part of the dwelling other than in the existing kitchen as shown on the submitted layout plan.

- 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 order revoking or re-enacting that Act or Order with or without modification), no food products shall be stored in the garage except within a refrigerator or freezer.

Subject to this it would accord with the aims of Policies EP4 and D2 of the UDP, policy PLP52 of the PDLP and Chapter 11 of the NPPF.

4 – Impact on highway safety: This part of Clay Butts is a fairly quiet residential street which does not offer a through route for traffic. The carriageway is rather narrow and it lacks footways. The turning head and

junction are however laid out to modern standards. All dwellings have internal private parking provision, although some on-street parking has been observed on the case officer's site visits.

The driveway to no. 29 has ample space to park and there is no evidence that the catering use, in the time it has been operational, has given rise to an increase in parking on the highway. It is considered that the proposal does not represent a material intensification on the use granted a temporary permission under (2017/91235) and that it would still be able to operate without the use of large commercial vehicles. Any possible future intensification can be forestalled by the use of appropriate conditions, such as were imposed on the temporary permission.

Highways Development Management do not object to the current proposal and confirm that no specific highway safety issues or incidents have been recorded.

It is considered that it has been established that the business can operate without giving rise to negative impacts on highway safety, subject to the conditions on the use of the premises as set out in part 3 above, and it would comply with the aims of Policies T10, T19, PLP21 and 22.

5 – Other matters:

Biodiversity:
The site is in the bat alert layer but the dwelling has no obvious bat roost potential and in any case no building works are proposed. The land immediately to the rear is part of the Wildlife Habitat Network (Draft Local Plan designation) but given the scale and nature of the use proposed there is no obvious reason why it should be affected.

6 – Representations: Objections based on concerns about residential amenity have been addressed in the main part of the assessment but are highlighted below together with responses to other issues raised and officer responses.

1. Inappropriate in a residential area.
   Response: The area is strongly residential in character but any proposal to use part of a dwelling for running a business must be assessed on its own merits.

2. Insufficient time for a review.
   Response: According to the applicant, the business has been operational since early September last year (they have answered "no" to "Has the change of use already started?" in part 3 but it is assumed that this is an error). When a temporary permission is granted, it is standard practice to specify 12 months although this is an arbitrary limit and sometimes a shorter time may be sufficient. It is considered on

balance that sufficient time has elapsed to allow Council officers to gain an accurate impression of what impact, if any, it has. It should be noted that it was originally Highways, not Environmental Health, who requested a temporary permission, and Highways Development Management now have no objections to a long-term permission.

3. The application is different because it does not specify cooking periods and is now purely commercial with no mention of meals on wheels or donations to charity.
   Response: These issues have been examined in detail in part (3) of the Assessment.

4. The business may expand even further.
   Response: It is difficult to see how the business could be expanded within the site without building an extension to the kitchen, which does not form part of the proposal, or taking up some of the existing ground floor living space in other rooms. In any case the condition that no cooking appliances be installed except in the existing kitchen as shown on the plans is clear and enforceable. The applicant has already stated that in the event of the business expanding beyond what can be accommodated in the property, they would hire a separate commercial kitchen.

5. Cooking odours.
   Response: This issue has been examined in detail in part 3 of the Assessment above. No complaints to Environmental Health were made at any stage during the application process or during the time period that the business was operating under the temporary permission. The case officer wrote to the two immediate neighbours of the property (who were also objectors) on 17th April to explain to them that the option of making a complaint to Environmental Health existed. As no complaints have been forthcoming, and given the small scale of the premises and the previous lack of objection from Environmental Health, it is considered on balance that the business is able to operate without causing any significant loss of amenity arising from odours or noise.

6. If it is to continue, an extraction system and flue should be installed.
   Response: Based on the scale and nature of the business, and Environmental Health comments, this course of action would not be justified. In email correspondence with the case officer on 18th May 2017, the Environmental Health Officer wrote that on the basis of the information supplied, an extraction system would not be necessary and allowing odours to disperse naturally by opening the window would be acceptable. In the unlikely event

7. Access and traffic issues as a result of the road being unsuited to business traffic, deterioration of the road surface, causing danger to wildlife and urbanisation of the area.
   Response: It is considered, based on the scale and nature of the business, conditions that can be imposed to prevent future

intensification, and the lack of objections from Highways Development Management, that it would not create or materially add to highway safety problems and it would not be possible to substantiate a refusal on such a basis. As previously stated, the business would be able to operate without the use of large commercial vehicles and only a few trips a day should be necessary. The site is not under any special designation for biodiversity purposes. The land immediately to the rear is part of the Wildlife Habitat Network but there is no obvious reason why the proposed use should affect it.

8. No site notices posted.
   Response: A site notice was in fact posted on 15th March – the objection letter that makes reference to this came in before the notice was put up.

9. Has anyone checked the kitchen layout?
   Response: The case officer viewed the interior ground floor layout at the time of the original application and in the early stages of this application. It appears that the property is still in use predominantly as a dwelling house and that there has been no encroachment of the catering use into other areas.

10. Increased fire and accident risk in kitchen.
    Response: This would be covered by other legislation (such as Health and Safety at Work regulations) and is not considered to be a material planning consideration.

11. Insufficient storage space.
    Response: This issue was raised during the previous application. Given the scale of the use proposed, it is expected that there would be sufficient space within the dwelling to store food safely. Food safety is however covered by other regulations, which the applicant would need to demonstrate compliance with.

12. Other errors or omissions on the application form.
    Response: It is considered that the applicant has supplied enough information to allow the application to be determined.

13. Increase in waste; existing waste bins are being stored inappropriately close to our property.
    Response: It is considered that owing to the scale and nature of the business only modest amounts of additional waste would be created, and that even the business were to give rise to more waste than it would if it were meals-on-wheels only, it is unlike that this would cause any storage problems. There would be room to place an additional grey or green bin within the curtilage if required. Where the occupant chooses to store a waste bin is something that cannot be controlled under planning legislation, whether the use is purely domestic or mixed.

14. It is against the terms of the lease.
    Response: This is a private civil matter and not a material planning consideration.

Conclusion

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 would constitute sustainable development and is therefore recommended for approval.

Recommendation – CONDITIONAL FULL PERMISSION

Decision Authorisation - Delegated Powers

Application Number: 20118/90320

Officer Recommendation: CONDITIONAL FULL PERMISSION

Conditions and Reasons

1. 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) (England) Order 2015 (or any order revoking or re-enacting that Act or Order with or without modification), no cooking appliances shall be installed in any part of the dwelling other than in the existing kitchen as shown on the submitted layout plan.
Reason: To ensure that the proposed use remains small-scale and ancillary to the existing residential use in the interests of residential amenity and highway safety, and to accord with the aims of Policies D2 and T10 of the Unitary Development Plan, Policies PLP21 and 52 of the Publication Draft Local Plan, and the National Planning Policy Framework – Conserving and enhancing the natural environment.

2. 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) (England) Order 2015 (or any order revoking or re-enacting that Act or Order with or without modification), no food products shall be stored in the garage except within a refrigerator or freezer. **Reason**: To ensure that the proposed use remains small-scale and ancillary to the existing residential use in the interests of residential amenity and highway safety, and to accord with the aims of Policies D2 and T10 of the Unitary Development Plan, Policies PLP21 and 52 of the Publication Draft Local Plan, and the National Planning Policy Framework – Conserving and enhancing the natural environment.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Application form			30-Jan-2018
Location plan			30-Jan-2018
Internal layout plan			30-Jan-2018

Pursuant to article 35 (2) of the Town and Country Planning (Development Management Procedure) Order 2015 and guidance in the National Planning Policy Framework, the Local Authority have, where possible, made a pre-application advice service available, complied with the Kirklees Development Management Charter 2015 and otherwise actively engaged with the applicant in dealing with the application. The case officer did not undertake

negotiations with the applicant as no amended or additional plans were considered necessary.

Report Dated: 01-May-2018