

**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: 2019/62/93048/W

Site Address: Level 3, Kingsgate Shopping Centre, King Street,
Huddersfield, HD1 2QB

Description: Sub division and change of use from A1 (Retail) to A1
and A1/A3/A4/D2 Uses

Recommending Officer: Nick Hirst

DECISION – Full Conditional 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.

Neil Bearcroft

AUTHORISED OFFICER

Date: 21-Nov-2019

Application: 2019/62/93048/W

Site: Level 3, Kingsgate Shopping Centre, King Street, Huddersfield, HD1 2QB

Proposal: Sub division and change of use from A1 (Retail) to A1 and A1/A3/A4/D2 Uses

Site Description

The Kingsgate Centre principally hosts retail units. This application relates to the ground floor of unit 1, which hosts House of Fraser. House of Fraser is also on the lower ground and first floor levels. The site is accessed through the Kingsgate Centre, or through the lower ground floor access on Zetland Street.

The Kingsgate Centre is on the south-eastern edge of Huddersfield Town Centre. To the west the application site fronts onto the lower part of King Street, which mostly host restaurant and drinking establishments. King Street hosts numerous listed buildings, with the site falling within Huddersfield Town Centre Conservation Area.

Description of Proposal

The area to change use has a floor area of 2842sqm. This is to be split into two units, an A1 unit and another with an open A1/A3/A4/D2 Use. The exact division of the floor area between the two units is unknown, however it is shown indicatively to be 362 to A1 and 2480 to D2.

The desired hours of use are Monday to Sunday, 0600 – 0200 for the D2 use. It is anticipated that the development would accommodate 10 full time equivalent jobs (5 full time, 10 part time).

Relevant Planning History

Application Site (including the whole Kingsgate Centre)

Note: The Kingsgate Centre has numerous permissions relating to its commercial use. The following are those deemed relevant to the current proposal.

88/06698: Outline Application for Retail Development Refurbishment of Queen St. Mission & King St. yards with ancillary car parking & highway works – Conditional Outline Permission

91/02220: New Shopping Centre and associated development including car parking – Approval of Reserved Matters

96/92049: Erection of covered shopping centre with car parking including use classes A1, A2, A3 (shops, financial & professional services, food & drink) and ancillary uses (amended proposals) – Conditional Full Permission

2016/92029: Erection of extension to existing Kingsgate Shopping Centre to form new Leisure Development including new cinema and restaurants, and demolition of existing buildings on the site including 20-22 Cross Church Street (partly within a Conservation Area) – Section 106 Full Permission

2016/92030: Listed Building Consent for erection of extension to existing Kingsgate Shopping Centre to form new Leisure Development including new cinema and restaurants, and demolition of existing buildings on the site including 20-22 Cross Church Street (partly within a Conservation Area) – Consent Granted

2018/90166: Outline permission for alterations and conversion of retail unit (A1) to 58-bedroom hotel (C1), partial demolition of building at level 4, erection of extension at roof level, erection of lift/stair core extension and erection of canopy to King Street at street level (within a Conservation Area and setting of Listed Buildings) – Conditional Outline Permission

2018/93933: Erection of extension at level 4 above existing unit store 1 – Withdrawn

2018/93568: Change of use of existing unit in a mixed Class A1/A2/A3 retail development to form a mixed A1/A2/A3/A4/D2 retail and leisure development, internal alterations and reconstruction of upper level, with extension, external slide and formation of roof terrace for use as sky bar – S106 Conditional Full Permission

2018/93937: Change of use from existing Class A1 (retail) to Class D2 (assembly and leisure) erection of entrance canopy, entrance lobby and a public lift (within a Conservation Area) – Conditional Full Permission

2019/92693: Variation condition 2 (plans) on previous permission 2018/93568 for change of use of existing unit in a mixed Class A1/A2/A3 retail development to form a mixed A1/A2/A3/A4/D2 retail and leisure development, internal alterations and reconstruction of upper level, with extension, external slide and formation of roof terrace for use as sky bar – Ongoing

History of Negotiations

None required relating to the proposed development, however the conditions were shared with the applicant, discussed and agreed.

Representations

Final publicity date expired: 01.11.2019

No public representations were received.

Consultation Responses

K.C. Highways: No objection.

K.C. Environmental Health: No objection subject to conditions.

Police Architectural Liaison Officer: Expressed concerns. Considered below.

Planning Policy

Kirklees Local Plan (KLP)

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 27th February 2019).

The site is Unallocated on the LP Policies Map, within the designated Huddersfield Town Centre.

The site is within the Huddersfield Town Centre Conservation Area.

- **LP1** – Presumption in favour of sustainable development
- **LP2** – Place shaping
- **LP3** – Location of new development
- **LP13** – Town Centre Uses
- **LP14** – Shopping frontages
- **LP16** – Food and drink uses and the evening economy
- **LP17** – Huddersfield Town Centre
- **LP21** – Highway safety and access
- **LP24** – Design
- **LP35** – Historic environment
- **LP51** – Protection and improvement of local air quality
- **LP52** – Protection and improvement of local 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 19th February 2019, and 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 2** – Achieving sustainable development

- **Chapter 4** – Decision-making
- **Chapter 6** – Building a strong, competitive economy
- **Chapter 11** – Making effective use of land
- **Chapter 12** – Achieving well-designed places
- **Chapter 15** – Conserving and enhancing the natural environment
- **Chapter 16** – Conserving and enhancing the historic 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

1.1 – Sustainable Development

NPPF Paragraph 11 and LP1 outline a presumption in favour of sustainable development. Paragraph 8 of the NPPF identifies the dimensions of sustainable development as economic, social and environmental (which includes design considerations). It states that these facets are mutually dependent and should not be undertaken in isolation.

The dimensions of sustainable development will be considered throughout the proposal. Paragraph 11 concludes that the presumption in favour of sustainable development does not apply where specific policies in the NPPF indicate development should be restricted. This too will be explored.

1.2 – Land allocation

The site is without notation on the KLP Policies Map. LP2 states that;

All development proposals should seek to build on the strengths, opportunities and help address challenges identified in the local plan, in order to protect and enhance the qualities which contribute to the character of these places, as set out in the four sub-area statement boxes below...

The site is within the Huddersfield sub-area. The listed qualities will be considered where relevant later in this assessment.

1.3 – Town centre uses and commercial development

The site is within Huddersfield Town Centre. NPPF Paragraph 85 requires that planning decisions to support the role that town centres play at the heart of local communities by taking a positive approach to their growth, management and adaptation. This includes retaining and enhancing existing markets and, where appropriate, re-introduce or creating new ones. This is supported by the preamble of LP13, which states;

Town centres are continually changing, and evolve depending on market supply and demand at any particular time. The habits and requirements of consumers, businesses, and visitors are also a contributory factor. Centres provide an important cultural destination for communities, and provide goods and services which are essential for people to live and work and for businesses to prosper and be successful.

Notwithstanding the above, the site falls within both a Primary Shopping Frontage and Primary Shopping Area and therefore LP14 must be considered. The policy states that the designations will be used for the following purposes:

Primary Shopping Area - the retail core individually defined for each town centre. For District Centres this will be the full extent of the defined centre boundary, where retail uses and other main town centre uses are focused. Uses within Primary Shopping Areas will be expected to maintain or provide active ground floor uses. Retail uses within the above areas will be supported.

Primary Shopping Frontages - frontages within the Primary Shopping Area in Principal and Town Centres that contain predominantly retail uses and where further retail uses will be focused.

Within the Primary Shopping Frontages as defined on the Town Centre Maps, at street level, proposals should seek to continue retail uses in order to retain vitality and viability within the Centre and the strong retail core. Retail will remain the predominant use on each primary shopping frontage. Other main town centre uses will be acceptable where the frontage remains predominately in retail use taking account of:

- a. the number, proximity, distribution of uses other than retail and the level of vacancy of ground floor units, and the duration of vacancy;*
- b. the location and prominence of the unit within the primary shopping frontage;*
- c. the nature of the proposed use, including the associated level of activity, hours of operation, whether a shop front would be incorporated and whether it would complement neighbouring uses; and*

- d. in all cases proposals including changes of use shall seek to either retain, enhance or replace to improve shop front design and layout.*

First considering the 'Primary Shopping Area' designation, the proposal would result in an A1 unit of 2842sqm gaining a D2 use¹. While acknowledging that applications 2018/93568 and 2018/93937, which also fall within the same 'Primary Shopping Area', have each allowed a COU of retail floor space within the Kingsgate to D2, both these applications related to non-active ground floors (being within the centre's lower ground and first floors). Therefore, for the purposes of LP14, it is not considered necessary to consider them cumulatively with the proposal.

In response to the 'Primary Shopping Area' designation the applicant has provided a Retail Impact Assessment. In summary, the report provides an overview of the retail market (including an independent report by 'Colliers International', assessment available retail space within Huddersfield Town Centre while raising the cumulative benefits of the proposed D2 use alongside approved change of uses of 2018/93568.

While officers note the loss of retail space within a Primary Shopping Areas, given the recent economic climate and known retail business issues, as outlined within the Retail Impact Assessment, in principle officers welcome the diversification of both the Kingsgate Centre and Huddersfield Town Centre. The introduction of a D2 use would enhance the existing night-time economy of the town centre by providing a different offer to that provided by the high concentration of public houses and hot food takeaways within the vicinity of the site.

The proposed D2 use would also enhance the existing night-time economy of the town centre by providing a different offer to that provided by the high concentration of public houses and hot food takeaways within the vicinity of the site. There would be significant public benefits to diluting the 'alcohol economy' in this part of the town centre and the proposal would strengthen the vitality and viability of the overall town centre.

Turning to the 'Primary Shopping Frontages' consideration, the proposal is for a main town centre use. House of Fraser represents 6% of the Kingsgate internal shop frontage². All other uses within the Kingsgate, as the time of writing, are in retail uses³. Given this, officers are satisfied that the Primary Shopping Frontage would remain predominantly in a retail uses and that the distribution of use (test a) would not be harmed. Furthermore, considering (b), the site is not unduly prominent or inappropriately located so as to cause harm. Turning to (c), the Kingsgate centre is principally retail. By virtue of its

¹ Note that the unit has an open permission to convert to A2 or A3 as existing (granted under the Kingsgate Centre planning permission).

² note, not floor space

³ 2018/93937 approved the change of use of the upper floor of 'store 4', with a new external entrance. The ground floor, which falls within the Primary Shopping Frontage, is shown to remain in A1 use.

layout, attendees would be required to go through the centre, with the other units potentially being closed given the hours of use. However, applications 2018/93568 and 2019/92693 include accesses from Zetland Street to the site, addressing this concern. As noted above, diversifying the floor space away from retail to D2 is deemed to enhance the viability and vitality of the centre. A 'shop front' would be retained and the design is deemed appropriate so as not to raise concerns when considering (d).

Considering the above, officers do not object to the proposed change of use in the context of the frontage being designated 'Primary Shopping Frontage'. This includes where the D2 use could be larger than shown on plan, which is noted to be indicative.

LP17 outlines specific requirements for development Huddersfield Town Centre. These will be considered where relevant within this report.

Concluding on the above, the principle of the proposed development is found to be acceptable. Consideration must be given to the local impact, outlined below.

2 – Impact on visual amenity, including the Huddersfield Town Centre Conservation Area

The site is located within the Huddersfield Town Centre Conservation Area. Section 72 of the Planning (Listed Buildings & Conservation Areas) Act 1990 introduces a general duty in respect of conservation areas. Special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. Additionally, LP35 and NPPF Chapter 16 outline the principle of development and restrictions for development in Conservation Areas.

No external physical alterations to the building are proposed as part of the development. Officers are therefore satisfied that there would be no harm to the character of the Conservation Area or the visual amenity of the Streetscene.

The proposal would include changes to the entrance within the Kingsgate, which is open to the public. LP14 requires shop frontages to 'retain, enhance or improve shop front design and layouts'. Despite this, the proposal seeks an internal change and limited weight could be given to it from a planning perspective, nonetheless officers do not consider the change to the internal shop-frontage harmful.

The proposal is deemed to comply with the aims and objectives of LP14, LP17, LP24 and LP35 of the KLP, Chapters 12 and 16 of the NPPF and S72 of the Planning (Listed Buildings & Conservation Areas) Act 1990.

3 – Impact on residential amenity

There are residential units to the south of the site. However no physical works are proposed to cause detrimental overbearing, overshadowing or overlooking.

In terms of noise, the proposed drinking establishment or entertainment and leisure use has the potential to be a noise pollutant. It is noted that the site can currently operate as an A1, A2 and A3 use under its original permission and the main consideration is the addition of an A4 and D2 use. Such uses are considered to have a greater potential for noise.

It is proposed that a condition be imposed requiring that the noise from the development be inaudible from any nearby noise sensitive premises, which is considered a reasonable method of control. A similar condition would be sought for associated plant equipment. This approach was taken during application 2018/93568, which approved a cinema within the floor above the application site. Therefore such an approach is deemed reasonable and consistent.

In terms of hours of use, 2018/93568 approved A3/A4 uses at lower ground floor until 0200 and no hours of use for the cinema. Thus a condition for the requested hours of use of 0600 – 0200 it is again deemed reasonable and consistent.

The above conditions will however be limited to A4 and D2 uses as these do not currently have consent to operate from the site.

Turning to odour pollution, Environmental Health have requested that a condition be imposed requiring technical detailing be provided for the required extraction units should the site come forward as an A3 use. Given that the proposal relates principally to the addition of a D2 and A4 use for the site, which already has an A3 use, officers do not consider such a condition reasonable to the development being considered.

Officers are satisfied that, subject to the proposed conditions, the proposal would not harm the amenity of neighbouring residents, in accordance with LP24 and LP52 of the KLP and Chapters 12 and 15 of the NPPF.

4 – Impact on highway safety

The proposal seeks to use existing floor space within a town centre. The Kingsgate Centre is served by a large car park, with numerous others being available in close walking distance, along with strong public transport links to the centre.

Officers are satisfied that the development would not represent a material intensification in demand for parking. Furthermore, the site would be accessed from a pedestrianised area. Accordingly, the proposal is not considered detrimental to the safe and efficient operation of the Highway, in accordance with LP21.

5 – Other matters

5.1 – Air quality

Huddersfield Town Centre is an Area of Concern and it is located within an Air Quality Management Area (Queensgate/Southgate). As the proposal seeks a change of use, when considering the categories of the West Yorkshire Low Emission Strategy, officers do not consider the proposal to represent 'major development'.

Notwithstanding this, LP51(3) requires development within AQMAs that would introduce new receptors to incorporate sustainable mitigation measures that protect from air pollution. Given the proposal seeks to introduce an A4 and D2 use with longer hours of use than the existing A1 use or other A2 or A3 uses at the site, the proposal is anticipated to introduce new receptors. Given the nature of the proposal, seeking a change of use, an appropriate level of mitigation is deemed to be the provision of charging points within the Kingsgate's car park. Subject to such a condition, officers are satisfied that the proposal would comply with the aims and objectives of LP24 and LP51 of the LP and Chapters 9 and 15 of the NPPF.

5.2 – Crime mitigation

The proposal seeks the provision of a leisure use and drinking establishments beyond what already has approval at the site within Huddersfield Town Centre. Furthermore it would result in an intensification of a public area. Crime prevention and counter terrorism are material planning considerations, as outlined by LP24 of the LP and Chapter 8 of the NPPF. To ensure suitable measures are proposed and implemented, if minded to approve, a condition requiring a strategy and details of such measures is to be imposed.

6 – Representations

No public representations were received.

7 – 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: Approve

Application Number: 2019/93048

Decision Authorisation: Delegated Powers

Officer Recommendation: Grant Conditional Permission

Conditions and Reasons

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

Reason: Pursuant to the requirements of Section 91 of the Town and Country Planning Act 1990.

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

Reason: For the avoidance of doubt as to what is being permitted and so as to ensure the satisfactory appearance of the development on completion, and to accord with Policy LP24 of the Kirklees Local Plan and Chapter 12 of the National Planning Policy Framework.

3. Prior to the hereby approved A4/D2 use being brought into use, a scheme detailing the dedicated facilities that will be provided for charging electric vehicles and other ultralow emission vehicles shall be submitted to, and approved in writing by, the Local Planning Authority. The hereby approved development shall not be brought into use until the approved scheme is installed and is made operational. The installed charging points shall thereafter be retained thereafter.

Reason: In the interest of supporting and encouraging low emission vehicles, in the interest of air quality enhancement as the site falls within an Air Quality Management Area, to comply with the aims and objectives of Policies LP24 and LP51 of the Kirklees Local Plan and Chapters 2, 9 and 15 of the National Planning Policy Framework.

4. Prior to the hereby approved A4/D2 use being brought into use, a report containing the proposed crime mitigation/prevention and anti-terrorism mitigation measures for the development shall be submitted to and approved in writing by the Local Planning Authority. The identified measures shall be implemented before hereby approved uses are brought into use and shall thereafter be retained.

Reason: In the interest of crime prevention and anti-terrorism mitigation, so as to comply with Policies LP16 and LP24 of the Kirklees Local Plan and Paragraph 95 of the National Planning Policy Framework.

5. The hereby approved A4/D2 use shall not be open to customers outside the following hours;

Monday – Sunday: 0600 – 0200

Reason: To ensure that the proposed use(s) does not give rise to the loss of amenity to nearby residential properties, by reason of noise or disturbance at

unsociable hours, to accord with the aims of Policies LP24 and LP52 of the Kirklees Local Plan and Chapters 12 and 15 of the National Planning Policy Framework.

6. The combined noise from any fixed mechanical services and external plant and equipment associated with the hereby approved A4/D2 use shall be effectively controlled so that the combined rating level of noise from all such equipment does not exceed the background sound level at any time. "Rating level" and "background sound level" are as defined in BS4142:2014.

Reason: To ensure the proposed development does not cause harmful noise pollution within neighbouring noise sensitive locations, in the interest of amenity, to comply with the aims and objectives of Policies LP24 and LP52 of the Kirklees Local Plan and Chapters 12 and 15 of the National Planning Policy Framework.

7. Amplified sound emanating from the hereby approved A4/D2 use shall be controlled so as to be inaudible outside any nearby noise sensitive premises. Inaudibility is defined as:-

- if the LAeq,(1min) (of the amplified sound from the development) is not greater than the LA90 (of the background) and
- if the L10 (5min) (of the amplified sound from the development) is not greater than the L90 (of the background) in each 1/3rd octave band between 40Hz and 160Hz.

Reason: To ensure the proposed development does not cause harmful noise pollution within neighbouring noise sensitive locations, in the interest of amenity, to comply with the aims and objectives of Policies LP24 and LP52 of the Kirklees Local Plan and Chapters 12 and 15 of the National Planning Policy Framework.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Location Plan	PL3 – 000		19.09.2019
Existing Grouped Plans and Elevations	PL02		19.09.2019
Proposed Grouped Plans and Elevations	PL – 02		19.09.2019
Supporting Information	Retail Impact Assessment.		19.09.2019

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 Planning 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.

Discussions took place regarding the description of development and proposed conditions. There were agreed and the application resolved.

Report Dated: 21.11.2019