

**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: 2019/62/94035/E

Site Address: Petrol Filling Station, 452, Bradford Road, Batley,
WF17 5LW

Description: Change of use of part of office/retail area to Class E
hot food/cafe/take away

Recommending Officer: Callum Harrison

DECISION – REFUSED

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

Paul Dowd

AUTHORISED OFFICER

Date: 14-Apr-2021

Officer Report

2019/94035 - Petrol Filling Station, 452, Bradford Road, Batley, WF17 5LW

Site Description

The application site relates to the Upper Batley Service Station at 452 Bradford Road. The service station comprises the petrol filling facility and shop. The service station is well set back from the main road and has accommodation for off-street parking for visitors to the retail element of the premises. The site is bounded by Bradford Road to the south, a warehouse directly to the east, residential properties to the north and a business unit to the north west. The site itself is unallocated.

Description of Proposal

The application is seeking permission for the change of use of part of the office/retail area to a Class E café/restaurant, which could also provide some take-away meals on an ancillary basis. The existing office, disabled w/c and a section store would be converted to form the small cafe. The disabled w/c would be re-positioned within the store. Full details of the proposed site layout can be seen on plan PL-01 dated Dec 2019 but received on 23rd October 2020.

History of Negotiations

Throughout the process Officers have been requesting that the proposed flue position be moved for amenity reasons, relating to neighbouring buildings. The originally proposed position, as shown on the plan *Site Plan, Existing floor layout plan, Elevations and Roof Plan by AN Architectural Design dated Dec 2019 (ref: YASIN 111 PL-01) received Dec 2019*, would subject neighbouring residents to the rear of the proposed development to unreasonable levels of odour and noise generated by the extract system. The proposed reposition shown on *Site Plan, Existing floor layout plan, Elevations and Roof Plan by AN Architectural Design dated Dec 2019 (ref: YASIN 111 PL-01) received Oct 2020* would be set approximately 2m away from the first-floor windows of the neighbouring building. This would, therefore, subject the occupants of neighbouring building to emissions and noise generated by the extract system, and this is also unacceptable. The agent has been informed several times through the process to move the flue to the front of the building and has agreed to do so. Furthermore, Officers have requested a kitchen extract ventilation scheme to be submitted. The agent submitted a scheme in March 2020. However, this was considered insufficient to overcome officers' concerns. Since this, the agent has agreed to submit a suitable kitchen extract ventilation scheme.

Officers have made numerous attempts to get the amended plans and additional information, or an update on when these can be expected to be

received by the Authority. The agent has not responded to these emails from officers and, thus, the application is being moved to determination based on the plans and information submitted to date, notably the *Site Plan, Existing floor layout plan, Elevations and Roof Plan by AN Architectural Design dated Dec 2019 (ref: YASIN 111 PL-01) received Oct 2020*.

Relevant Planning History

2004/94873 – Increase height of canopy on petrol forecourt – approved.

2011/91541 – Erection of extension to rear of shop, canopy raised and erection of timber fence to site boundary – approved.

2011/92318 – Non-material amendment to permission number 2011/62/91541/E1, for erection of extension to rear of shop, canopy raised and erection of timber fence to site boundary, to raise pole sign to 7m in height – approved.

2015/91690 – Erection of first floor storeroom extension – approved.

Representations

The application was advertised by neighbour notification letters. Final publicity expired on 31st January 2020. No representations were received.

Consultations

KC Highways Development Management – No objections.

KC Lead Local Flood Authority – No objections.

KC Environmental Health – Object to the proposed flue position and require additional information regarding the kitchen extract ventilation scheme.

Policy

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications be 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 allocated as unallocated in the Kirklees Local Plan 2019.

Kirklees Local Plan (KLP):

LP1 – Achieving sustainable development

LP2 – Place shaping

LP21 – Highway safety

LP22 – Parking

LP24 – Design
LP27 – Flood Risk
LP52 – 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 19th February 2019, 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 12 – Achieving well-designed places

Chapter 15 – Conserving and enhancing the natural environment

Assessment

1. Principle of Development

The site is without notation on the Kirklees Local Plan (KLP). Policy LP1 of the KLP states that when considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF. In this case, the principle of development is considered acceptable and the proposal shall now be assessed against all other material planning considerations, including visual and residential amenity, as well as highway safety.

2. Impact on Visual Amenity

The proposed works would be mostly internal alterations, with the only external changes being the provision of the flue. Given this, the proposal is considered acceptable in terms of visual amenity.

3. Impact on Amenity of Neighbouring Properties

Policy LP24 states that 'Proposals should promote good design by ensuring:
b. they provide a high standard of amenity for future and neighbouring occupiers.' Chapter 12 of the NPPF reiterates the need to protect the amenity of neighbouring occupiers.

As stated in the history of negotiations, the flue position originally proposed to the rear of the building would have subjected neighbouring dwellings to the rear of the proposed development to unreasonable levels of odour and noise generated by the extract system. The flue position was repositioned to the south-eastern side of the building. This reposition was crudely shown on plan *Site Plan, Existing floor layout plan, Elevations and Roof Plan by AN Architectural Design* dated Dec 2019 (ref: YASIN 111 PL-01) received Oct 2020. Officers accepted this plan in anticipation of receiving a kitchen extract

ventilation scheme, which together would clearly demonstrate what is being proposed, which, potentially, could be supported.

The new position, to the side as shown on the plan received in October 2020, would be less than 2m away from the first-floor windows of the neighbouring commercial building. This would, therefore, subject the occupants of neighbouring building to emissions, odour and noise generated by the extract system, which is unacceptable. Officers requested that the flue position be moved to the front of the building. However, this amendment has not been made. Given the extremely close distance between the proposed flue and the first-floor windows of the neighbouring commercial building, the proposal can be considered to detrimentally impact on the amenity of neighbouring buildings and, thus, the proposal is considered contrary to LP24 of the KLP.

4. Impact on Highway Safety

No trip generation figures were provided with the application. However, the proposals are not expected to increase trips sufficiently to have a severe impact on the operation and efficiency of the local highway network. Furthermore, the existing access and waste collection points are as existing and, therefore, are considered acceptable. Given this, the proposal is considered acceptable in terms of Highway Safety.

5. Other Matters

Odour and Noise Pollution

Policy LP52 of the KLP: 'Proposals, which have the potential to increase pollution from noise, vibration, light, dust, odour, shadow flicker, chemicals and other forms of pollution or to increase pollution to soil or where environmentally sensitive development would be subject to significant levels of pollution, must be accompanied by evidence to show that the impacts have been evaluated and measures have been incorporated to prevent or reduce the pollution.' Chapter 15 of the NPPF also aims to prevent pollution by conserving the natural environment, it states: 'Planning policies and decisions should contribute to and enhance the natural and local environment by: preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability.'

Officers have also requested the submission of a kitchen extract ventilation scheme as discussed above. The agent has failed to provide a sufficient scheme (one produced in accordance with the EMAQ guidance on the "*Control of Odour and Noise from Commercial Kitchen Exhaust Systems*" 2018) and without this scheme, officers cannot make an accurate assessment as to whether the proposal would cause pollution. By virtue of the change of use to a takeaway, the proposal has scope to cause substantial pollution and officers cannot determine whether the impacts have been evaluated and measures have been incorporated to prevent or reduce the pollution. Given

the lack of sufficient information, the proposal is deemed contrary to policy LP52 of the KLP and Chapter 15 of the NPPF.

Flood Risk

A 'change of use' application should include a Flood Risk Assessment, as stated in the *Planning Practice Guidance: Flood Risk and Coastal Change* paragraph 048. Given the location of the proposed change of use is close to Flood Zones 2 and 3 but not lying within them, and the change of use does not constitute a change of vulnerability classification, the proposal is considered acceptable in regard to flood risk and, thus, it accords with policy LP27 of the KLP.

6. Representations

None.

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 does not accord with policies LP24 and LP52 of the KLP and Chapters 12 and 15 of the NPPF, regarding impact on neighbouring occupiers and pollution.

Recommendation – Refusal

Reasons for Refusal

1. The location of the proposed flue, as shown on *Site Plan, Existing floor layout plan, Elevations and Roof Plan by AN Architectural Design dated Dec 2019 (ref: YASIN 111 PL-01) received Oct 2020* would be set approximately 2m away from the first-floor windows of the neighbouring building. This would subject the occupants of neighbouring building to emissions and noise generated by the extract system. Thus, the proposal does not provide a high standard of amenity for neighbouring occupiers. The proposal is contrary to policy LP24 of the Kirklees Local Plan and Chapter 12 of the National Planning Policy Framework.

2. Insufficient information has been provided regarding a kitchen extract ventilation scheme. The proposal has scope to harm the environment via pollution and thus the omission of an acceptable kitchen extract ventilation scheme means it cannot be determined whether the proposal adequately protects and improves environmental quality. The proposal is contrary to policy LP52 of the Kirklees Local Plan and Chapter 15 of the National Planning Policy Framework, due to insufficient information.

Plan Type	Reference	Version	Date Received
Grouped Plans and Elevation	on <i>Site Plan, Existing floor layout plan, Elevations and Roof Plan by AN Architectural Design dated Dec 2019 (ref: YASIN 111 PL-01)</i>	2	23/10/2020

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 has, 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. Throughout the process Officers have requested that the proposed flue position be repositioned for amenity reasons relating to neighbouring buildings. The originally proposed position, as shown on the plan *Site Plan, Existing floor layout plan, Elevations and Roof Plan by AN Architectural Design dated Dec 2019 (ref: YASIN 111 PL-01) received Dec 2019*, would subject neighbouring residents to the rear of the proposed development to unreasonable levels of odour and noise generated by the extract system. The proposed repositioned flue shown on *Site Plan, Existing floor layout plan, Elevations and Roof Plan by AN Architectural Design dated Dec 2019 (ref: YASIN 111 PL-01) received Oct 2020* would be set no more than 2m away from the first-floor windows of the neighbouring building. This would subject the occupants of the neighbouring building to emissions and noise generated by the extract system, which is unacceptable. The agent has been informed several times throughout the process to relocate the flue to the front of the building and agreed to do so. Furthermore, officers requested a kitchen extract ventilation scheme to be submitted. The

agent submitted a scheme in March 2020. However, this was insufficient. Since then, despite the agent agreeing to submit a suitable kitchen extract ventilation scheme and numerous requests by officers for the amended plans and additional information, this has not been submitted. The agent has not responded to emails from officers. Accordingly, the application is hereby determined based on the plans and information submitted to date, notably the *Site Plan, Existing floor layout plan, Elevations and Roof Plan by AN Architectural Design dated Dec 2019 (ref: YASIN 111 PL-01) received Oct 2020*.