

**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: 2020/62/90784/E

Site Address: 260-262, Wakefield Road, Earlsheaton, Dewsbury,
WF12 8AN

Description: Alterations to convert part of existing newsagent into
prayer facility

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: 31-Mar-2021

1.0 INTRODUCTION

- 1.1 The application has received a high number the number of representations received during the publicity period. The LPA received 323 comments regarding this application as well as a petition with 122 signatures, which demonstrates a high public interest in the application. 10 of the comments received were in support, whilst all but 1 of the other comments received were against the proposal – a singular representation received was a general comment.
- 1.2 The application was taken to the Chair's Briefing on 30/03/2021 for the Heavy Woollen Planning Sub-Committee to be held on 14/04/2021. The Chair stated that he knew the application site and wider area well and the application was discussed in depth. In view of the fact that the vast majority of comments were against the application and the case officer recommendation would be to refuse the application; the decision was made by the Chair for the application to be decided under Delegated Powers.

2.0 SITE AND SURROUNDING

- 2.1 The application site, which is located on Wakefield Road, comprises an existing terraced building that has a previous use as a newsagent's premises. The building benefits from a widened pavement to the front and a hard-surfaced area to the rear, accessible by vehicles from a narrow road. From the rear the building appears as a residential dwelling.
- 2.2 The buildings surrounding the site are mostly residential. As per the submitted design and access statement, residential flats are set on the first floor of the building. No.258, the attached building to the west, is a dwelling. To the north and south of the site are more residential dwellings. However, a highway immediately borders the site on these elevations. To the east of the site, at no.264, is a Chinese takeaway.
- 2.3 The site is set within the Wakefield Road, Earlsheaton Local Centre.

3.0 PROPOSAL

- 3.1 Planning permission is sought for alterations to convert part of the existing newsagent's premises into a prayer facility.
- 3.2 The change of use would solely relate to the ground floor of the building. The flats on the first floor would be retained in their current residential use. The site would be accessed via an existing door on the rear elevation. The prayer room would be set at the front of the ground floor. The full internal layout can be seen on plan 'S01 – Proposed Details'.

- 3.3 The application would see two off-street parking spaces being retained to the rear on an existing hardstanding area. These spaces would be for disabled persons visiting the site, as per the design and access statement.
- 3.4 The external changes are minimal. The proposal would see the signage for the previous newsagents removed along with the timber boards to the windows. The windows would then be lined with a mirror film for privacy. The existing front door would be used as a fire exit.
- 3.5 The design and access statement states that the facility would operate with a membership scheme and with a maximum of 25 members. Furthermore, it states that only pedestrian access will be allowed to the facility. Other restrictions proposed by the applicant/agent include: no teaching programmes to be provided; no Friday prayers to take place at the facility; and prayer times to be limited to evenings, during weekends.
- 3.6 The proposal would see lighting introduced to the rear entrance and front fire exit, on a low-angled setting.

4.0 RELEVANT PLANNING HISTORY

90/01847 – Change of use to Chinese food takeaway was refused.

94/90449 – Erection of illuminated fascia and projecting signs was granted.

5.0 HISTORY OF NEGOTIATIONS

- 5.1 The agent was contacted to further clarify the prayer times and proposed number of members. The agent stated that due to the variation in sunset times between summer and winter, the prayer times will, accordingly, vary. However, no prayers will be longer than half hour. In **summer there would be four prayers over weekends** and public holidays and three prayers on weekdays. In winter **there would be four prayers over weekends** and public holidays and two prayers on weekdays.
- 5.2 The agent also stated that there would be 10-15 people per prayer outside Ramadhan and a maximum of 25 people per prayer in Ramadhan.
- 5.3 Finally, the agent stated that they were happy for either the front or rear door to be the main access.

6.0 PLANNING POLICY

- 6.1 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).

6.2 The site is set within the Wakefield Road, Earlsheaton Local Centre.

6.3 Kirklees Local Plan (KLP):

LP1 – Presumption in favour of sustainable development

LP2 – Place shaping

LP13 – Town Centre Uses

LP21 – Highway Safety

LP22 – Parking Provision

LP24 – Design

LP52 – Protection and improvement of environmental quality

6.4 National Planning Policy Framework (NPPF):

Chapter 2 – Achieving sustainable development.

Chapter 6 – Building a strong, competitive economy.

Chapter 9 – Promoting sustainable development.

Chapter 12 – Achieving well designed places.

Chapter 15 – Conserving and enhancing the natural environment.

7.0 PUBLIC/LOCAL RESPONSE:

7.1 323 representations were received during the publicity period. One representation was a general comment about the existing building's use. Ten of the representations received were in support of the proposal and the remaining 312 were against the proposal. One of the representations received contained a petition with 122 signatures. This petition was against the proposed development. These comments have been summarised below.

7.2 A summary of the representations received against the proposal:

Highways

- The lack of vehicle parking proposed will cause parking on nearby streets and then cause parking and traffic issues on Wakefield Crescent and Wakefield Road in particular.
- The highway is already busy due to the takeaway, schools and shops nearby and this, with the lack of proposed parking, would further exacerbate current issues.
- The area does not have enough on-street parking for current uses nearby, and the proposal would further intensify this issue.

Residential Amenity

- Noise from the activities at the facility and associated traffic will impact on the amenity of neighbours.
- Inappropriate setting as it is a residential area.

Proposed Use in Local Centre

- Already a sufficient number of these facilities in the area and thus not beneficial to the local community.
- The proposed use does not reflect the local community.

None of the other matters are material planning considerations.

7.3 A summary of the representations received in support of the application:

Impacts on the Highway

- The facility will not allow members to drive to the site meaning the impact on the highway would be minimal.
- Parking could be provided to the front.
- Will mean people can walk to prayer as opposed to drive elsewhere and, therefore, reduce vehicles on the road.

Proposed Use in Local Centre

- It will be well used by members of the community who live nearby.

Impact on Visual Amenity

- The proposal would see the existing visually improved from a poor state it is currently in

None of the other matters are material planning considerations.

8.0 CONSULTATION RESPONSES

The following is a brief summary of consultee advice (more details are contained within the assessment section of the report, where appropriate):

8.1 Statutory:

KC Highways Development Management – Object to the proposal given the intensification of the site and its incompatibility with the surrounding uses, the proposal is likely to have a detrimental impact on highway safety due to a lack of safe, accessible, and practicable parking provision.

8.2 Non-statutory

KC Environmental Health – Object to the proposal due to the potential for noise impact from the proposed development to the neighbouring residential units. KC Environmental Health suggested several conditions relating to the keeping of doors closed and implementing agreed noise mitigating measures, if the application were to be supported.

9.0 MAIN ISSUES

- Principle of development
- Visual amenity
- Residential amenity
- Highway issues
- Representations

10.0 APPRAISAL

Principle of development

- 10.1 The application site is set within the Wakefield Road, Earlsheaton Local Centre. The local centre is small, covering 1.1 hectares. Existing facilities and services in the Local Centre include a petrol filling station, with convenience store, a health centre, takeaways and a beauty salon/hairdresser's. However, most buildings in the Local Centre are residential. The proposed use as a prayer room is considered acceptable in the local centre, given that it provides a service/facility in the local community and, thus, accords with policy LP13 of the KLP. Given this, the principle of development is considered acceptable and now the proposal will be assessed against other material planning considerations.

Visual Amenity

- 10.2 The proposed development will see minimal external changes. The fitting of external lighting above the external doorways, the removal of the newsagent signage and the replacement of the window boards with mirrored film represent the full extent of the external works. Given the derelict state of the building, particularly to the front, the visual amenity of the building will be improved by virtue of bringing the unit back into use. Given this, the proposal is considered acceptable regarding visual amenity and it accords with policy LP24.

Residential Amenity and Environmental Impacts

- 10.3 Policy LP24 of the Kirklees Local Plan states: 'Proposals should promote good design by ensuring:... b. they provide a high standard of amenity for future and neighbouring occupiers'. Policy LP52 of the Local Plan states 'Such developments, which cannot incorporate suitable and sustainable mitigation measures, reduce pollution levels to an acceptable level to protect the quality of life and well-being of people'. These policies echo chapters 12 and 15 of the NPPF. These two matters overlap in relation to this case.
- 10.4 The proposed development would be open for use from 17:00 until 23:00 every day of the week, including Sundays and Bank Holidays. There will be up to a maximum number of 25 persons at the site for each prayer between these times.

- 10.5 The first floor of the application building is used for residential accommodation independent to the use on the ground floor, thus these are considered separate planning units. The attached neighbour at no.258 is also a residential dwelling. A prayer facility that will be used into the late hours, for a relatively high number of people, given the modest size of the application site, is considered unacceptable. Its incompatibility with the surrounding uses, and the resultant implications in relation to noise, would result in a harmful impact to the amenity of the occupiers of the existing residential units and would, thus, be contrary to policy LP24 of the KLP and Chapter 12 of the NPPF.
- 10.6 The submitted noise report, states that there would be little impact on the flats above. However, this is based upon sound insulation measures, a limit to persons at the site at any time, a noise limit to internal prayer calls and vehicles not going to and from the site. Officers believe that ensuring the implementation of these measures through condition is not a viable option, given they are not enforceable and the difficulties that Officers would face in gathering any evidence to investigate any breaches of these conditions. As Officers cannot ensure that these measures and conditions would be implemented, retained and complied with, the findings of the noise report are considered moot.
- 10.7 Furthermore, KC Environmental Health requested a condition that the windows and doors should be kept closed unless in emergencies if the application were to be supported. This condition would also be impossible to enforce and, thus, would not accord with the six tests for conditions as set out in Government guidance in the NPPG. This condition would also be considered unreasonable. Given the keeping of windows and doors closed cannot be conditioned, the ability and likelihood of windows being opened would render all the proposed noise mitigation measures ineffective and, thus, it is likely that noise pollution would be caused, contrary to LP52 of the KLP.
- 10.8 Given that there are no amendments or conditions that could overcome these concerns regarding the impact on neighbouring dwellings, Officers consider the proposal to be contrary to policies LP24 and LP52 of the KLP and Chapters 12 and 15 of the NPPF, regarding Residential Amenity.

Highway Amenity

- 10.9 KC Highways Development Management were consulted as part of this application. This section of the report has been produced in accordance with their consultation response.
- 10.10 The Design and Access Statement produced by ISR suggest a strict membership programme will be introduced with a maximum membership of 25 persons, each to be within easy walking distance of

the site. The application shows two off-street parking spaces to the rear, for disabled persons. These spaces are already provided.

- 10.11 Although it is suggested that members would be within walking distance of the site, Officers have concerns regarding the lack of off-street parking. There remains a likelihood that some attendees would elect to drive, and that this scheme would intensify use of the highway. It needs to be considered that a condition to ensure attendees walk to the site does not meet the “six tests” for planning conditions and, therefore, the LPA would have no power to ensure that this happens. Therefore, the proposal must be determined on the basis that attendees could, and likely would, drive to and from the site, given there would be no planning controls to the contrary.
- 10.12 Outside of the application site, Wakefield Road is protected by a “no waiting at any time” restriction, with a formal pedestrian crossing close by. This could cause two additional issues, firstly that any parking associated with the proposal would migrate onto nearby residential streets, off Wakefield Road, where parking demand can often outweigh provision; and secondly that picking-up and dropping-off can still legally take place on the double-yellow lines, but vehicles doing so may obscure the pedestrian crossing in this location. By virtue of the intensification of the site and its incompatibility with the surrounding uses, the proposal is likely to have a detrimental impact on highway safety. due to a lack of safe, accessible, and practicable parking provision. The provision of two off-street spaces, is considered insufficient for a proposal of this nature, and in this location on the Highway Network.
- 10.13 Given the above, the proposal is considered to be contrary to policies LP21 and LP22 of the KLP and Chapter 12 of the NPPF.

Representations

- 10.14 323 representations were received during the publicity period. One representation was a general comment about the existing building's use, ten of the representations received were in support of the proposal and the remaining 312 were against the proposal. One of the representations received contained a petition with 122 signatures, this petition was against the proposed development. The material planning considerations raised within the comments have been summarised and responded to by Officers below. Non-material planning considerations have not been addressed or summarised as they cannot be considered during the decision-making process.
- 10.15 A summary of, and response to, the representations received against the proposal:

Highways

- The lack of vehicle parking proposed will cause parking on nearby streets and then cause parking and traffic issues on Wakefield Crescent and Wakefield Road in particular.
- The highway is already busy due to the takeaway, schools and shops nearby and this, with the lack of proposed parking, would further exacerbate current issues.
- The area does not have enough on-street parking for current uses nearby, this would further intensify this issue.

Response: Noted and discussed in the assessment above.

Residential Amenity

- Noise from the activities at the facility and associated traffic will impact on the amenity of neighbours.
- Inappropriate setting as it is a residential area.

Response: Noted and discussed in the assessment above.

Proposed Use in Local Centre

- There is already a sufficient number of these facilities in the area and, thus, this would not be beneficial to the local community.

Response: Noted and discussed in the assessment above.

- The proposed use does not reflect the local community.

Response: The demographic of the area is not a material planning consideration.

All other matters raised in the representations are not material planning considerations and do not need to be addressed.

10.16 A summary of, and response to, the representations received in support of the application:

Impacts on the Highway

- The facility would not allow members to drive to the site, meaning the impact on the highway would be minimal.
- Parking could be provided to the front.
- Will mean people can walk to prayer, as opposed to drive elsewhere and, therefore, reduce vehicles on the road.

Response: Noted and discussed in the assessment above.

Proposed Use in Local Centre

- It will be well used by members of the community who live nearby.

Response: Noted.

Impact on Visual Amenity

- The proposal would see the existing visually improved from a poor state it is currently in.

Response: Noted and discussed in the assessment above.

All other matters are not material planning considerations.

11.0 CONCLUSION

- 11.1 To conclude, it is considered that the proposal by virtue of the intensification and layout of the site, its incompatibility with the surrounding uses, and the resultant implications in relation to noise, would result in a harmful impact to the amenity of the occupiers of the existing residential units next to the site as well as a detrimental impact on highway safety, due to a lack of safe, accessible and practicable parking provision and thus it is contrary to Policies LP1, LP21, LP22, LP24 and LP52 of the KLP and Chapters 12 and 15 of the NPPF and would fail to be in the interests of proper planning.
- 11.2 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.
- 11.3 This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development would not constitute sustainable development and it is, therefore, recommended for refusal.

Recommendation:

Refuse

Decision Authorisation - Delegated Powers

Application Number: 2020/90784

Officer Recommendation: Approve

Reason for Refusal:

1. The proposal by virtue of the intensification of the site, its incompatibility with the surrounding uses, and the resultant implications in relation to noise, would result in a harmful impact to the amenity of the occupiers of the existing residential units next to the site as well as a detrimental impact upon highway safety, due to a lack of safe, accessible and practicable parking provision. To permit the development would be contrary to Policies LP1, LP21, LP22, LP24 and LP52 of the Kirklees Local Plan and Chapters 9, 12 and 15 of the National Planning Policy Framework and would fail to be in the interests of matters of acknowledged importance.

Plans and Specifications:

Plan Type	Reference	Version	Date Received
Grouped Plans and Elevations	S01 – Proposed Details	1	10/03/2020
Design and Access Statement		1	10/03/2020
Noise Assessment		1	15/05/2020

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.

The agent was contacted to further clarify the prayer times and proposed number of members. The agent stated that, due to the variation in sunset times between summer and winter, the prayer times will, accordingly, vary. However, no prayers will be longer than half hour. In **summer there would be four prayers over weekends** and public holidays and three prayers on weekdays. In winter **there would be four prayers over weekends** and public holidays and two prayers on weekdays. The agent also stated that there would be 10-15 people per prayer meeting outside Ramadhan and a maximum of 25 people per prayer meeting in Ramadhan. Finally, the agent stated either the front or rear door could be used as the main access.

