KIRKLEES METROPOLITAN COUNCIL
INVESTMENT & REGENERATION SERVICE

DEVELOPMENT MANAGEMENT

Town and Country Planning (General Permitted Development) (England) Order 2015 - Schedule 2, Part 3, Changes of Use

DELEGATED DECISION FOR DISCHARGE OF CONDITION - NOTIFICATION OF A CHANGE OF USE UNDER THE ABOVE PROVISIONS

Reference no.	**2020/CL/90811/W**
Site Address	**59, Market Street, Milnsbridge, Huddersfield, HD3 4HZ**
Description	**Prior notification for change of use from office to one dwelling (within a Conservation Area)**
Recommending Officer	**Ellie Worth**

DECISION - REFUSE

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.

Kevin Walton

AUTHORISED OFFICER

Date: 08-Jun-2020

Officer report

Site description
The application relates to 59 Market Street, Milnsbridge a two storey mid-terrace property. The building appears to be in use as a bar at ground floor with office and residential accommodation at first and second floor. The building has a small yard to the rear, alongside a sets of steps providing access to the first and second floor.

The site is situated within Milnsbridge Local Centre and Conservation Area on the Kirklees Local Plan and is surrounded by commercial and residential properties.

Description of proposal
Prior approval of proposed change of use from office (Class B1a) to 1 residential unit (C3).

Relevant Planning History
At the application site
2006/94358 Change of use and alterations to convert first floor storage/office to conference room and second floor storage to 1 no. apartment (within a conservation area) – Granted

2011/92942 Change of use of ground floor to restaurant with associated takeaway service (within a Conservation Area) – Granted

2015/91072 Discharge of condition 7 (extract ventilation system) on previous planning permission 2011/92942 for change of use of ground floor to restaurant with associated takeaway service (within a conservation area) – Approved

History of Negotiations
The officer entered into various discussions with the applicant regarding the use of the first floor and whether it had an established B1(a) use prior to the 29th March 2013. As such, additional justification was received via email in order for officers to undertake a thorough assessment. An extension of time was also agreed by the applicant in writing.

Procedural Matters and Policy Context
The above described proposal constitutes development as defined within Section 55 of the Town and Country Planning Act 1990. The General Permitted Development Order 2015, Schedule 2 Part 3 Class O, and as amended by the Town and Country Planning (General Permitted Development) (England) (Amendment) Order 2016.

The legislation permits the following development:

O. Development consisting of a change of use of a building and any land within its curtilage from a use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of that Schedule.

The proposal is considered to be covered within this Class, and is thus authorised subject to the restrictions, conditions and prior notification procedure outlined in Paragraphs O.1 (as amended) and O.2 (as amended).

Paragraph O.1 (as amended) stipulates that development is not permitted in the following circumstances:

The building is on article 2(5) land and an application under paragraph O.2(1) in respect of the development is received by the local planning authority on or before 30th May 2019.	The building is not on Article 2(5) land and was received 11th March 2020.
If the building was not used for a use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order on 29th May 2013 or if the building was not in use immediately before that date, when it was last in use	Fail - Having undertaken various discussions with the applicant regarding the use of the site, officers are satisfied that the first floor was not within a B1(a) use prior to May 2013. *See full assessment below*
If the site is or forms part of a safety hazard area.	The site does not lie within a safety consultation zone for a hazardous material site.
The site is or forms part of a military explosive's storage area	N
If the building is a listed building or scheduled monument	N

Given the above it is considered that the proposal would *fail* to comply with part O.1 of Part O of the GPDO.

O.2 (as amended) stipulates the need for the developer to submit an application for Prior Notification from the Local Planning Authority. Prior Notification is required for the following considerations:
a) transport and highways impact of the development;
b) contamination risks on the site;

c) flooding risks on the site; and
d) impacts of noise from commercial premises on the intended occupiers of the development

Paragraph W outlines procedure for the submission, and assessment of, applications under Part 3 which require Prior Approval. Under the procedures outlined in Paragraph W, the Council is required to consult relevant bodies and advertise the application. Due to COVID19 a site notice has not been erected, however neighbour notifications letters have been sent to the neighbouring and nearby premises.

To assess the above, relevant policies in the development plan and national planning policies will be considered.

Policy
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 situated within Milnsbridge Conservation Area and Local Centre on the Kirklees Local Plan.

Kirklees Local Plan
• LP21 – Highway Safety and access
• LP22 – Parking
• LP24 – Design
• LP27 – Flood risk
• LP35 – Historic Environment
• LP51- Protection and improvement of local air quality.
• 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 9 – Promoting sustainable transport.
• Chapter 12 – Achieving well-designed places
• Chapter 14 – Meeting the challenge of climate change, flooding and coastal change
• Chapter 15 – Protecting and enhancing the local environment

Representations
We are currently undertaking statutory publicity requirements, as set out at Table 1 in the Kirklees Development Management Charter. As such, we have publicised this application via neighbour notification letters which expired on the 31st March 2020, whereby no representations have been received.

Consultation Responses
KC Highway DM: No objection given the sustainable location of the site and the fact that a parking space will be retained to the rear of the property for the proposed residential unit.

KC Environmental Health: No objection subject to conditions regarding an electrical charging vehicle point and a noise report being attached to the decision notice.

The Environment Agency: No comments have been provided however, an attachment to the standing advice was received.

Assessment
The GPDO Class O is specifically restricted to the change of use from Class B1(a) offices to residential. The application form states that the building was last used as offices in the B1(a) class and that this use was taking place on 29th May 2013.

However, having reviewed the history of the application site, the evidence suggest that the previous 2006 application for the change of use and alteration to convert the first floor storage/office into conference was not implemented. Even if this application had been implemented and given the layout provided on submitted plans, the conferencing facility would appear to be ancillary to the ground floor restaurant permission and not office space.

It can be concluded from a review of google maps which shows the first floor to be in use as a fire shop in 2011, with there being no planning permission for an office use after this. Therefore, any change of use would have been done unlawfully and therefore would not benefit from permitted development.

As such, the evidence made available to the LPA suggests that the first floor space has been used as ancillary accommodation to the ground floor use in

2013. Furthermore, images taken from google street view in 2014, also shows the ground floor door leading up to the first floor, to not of been restricted by a pin lock, as it is now. This further demonstrates that the both floor may have used in conjunction with the previous ground floor use.

Sub-paragraph 3 of paragraph W of Part 3 allows the local planning authority to refuse an application where: “The developer has provided insufficient information to enable the authority to establish whether the proposed development complies with, any conditions limitations or restrictions specified in this Part (3) as being applicable to the development in question”.

In this case there is insufficient evidence to confirm that the building would benefit from Class O development with respect to the existing use class.

As per O.2 (as amended) the following matters are also considered in the assessment below –

1) Transport and highways impacts of the development
1) Contamination risks on the site
2) Flooding risks on the site
3) Impacts of noise from commercial premises on the intended occupiers of the development
4) Representations
5) Conclusion

1) Transport and highways impacts of the development
The application site is situated within Milnsbridge Local Centre and therefore is within a close proximity to key transport links. Furthermore, it has been noted that the unit benefits from an area of hardstanding to the rear in which is used for on-site parking. As such, KC Highway DM have raised no objection to the proposal, as one parking space would be provided for the new unit.

There is no bin storage area shown on the plans, however it is clear that this will be done as existing, which is likely to be to the rear of the site.

It is therefore considered that the proposed change of use would be considered acceptable from a highway safety perspective and in accordance with Policies LP21 and LP24 of the Kirklees Local Plan.

2) Contamination risks on the site
The proposed change of use has been assessed by Environmental Health with regards to contamination risks at the site in relation to Policy LP53 of the Kirklees Local Plan and guidance within the NPPF. The site is not within an area where there is a known source of contamination therefore it is

considered that there are no significant contamination risks associated with the site.

3) Flooding risks on the site

The application site is situated within Flood Zone 2 and therefore a Flood Risk Assessment is required. In this instance, an in-depth FRA has not been received, however, the applicant has provided some detail regarding the finished floor levels and surface water management.

The Environment Agency have also been formally consulted as part of this application as the development falls into the 'most vulnerable' category. In this instance, no comments have been sought, however officers have been directed to the Environment Agencies standing advice.

Surface water management

Given the nature of the proposal it has been considered that there would be no alterations to the existing surface water management, as any drainage or water disposal would be as existing.

Access and evacuation

The applicant is seeking permission for a change of use at first floor, and therefore no part of the building would be below the estimated floor level. The submitted plans also show access to be taken from the existing staircase at the rear of the building.

Floor levels

As outlined within the submitted FRA, the finished floor levels would be above the expected levels for development within Flood Zone 2. This is due to the fact that all accommodation would be a first floor level,

Therefore, the proposal is considered to comply with the Environment Agencies standing advise, whereby officers do not consider there to be any significant flood risk, in accordance with Policy LP27 of the Kirklees Local Plan and Chapter 14 of the NPPF.

4) Impacts of noise from commercial premises on the intended occupiers of the development

The site is situated within a mixed-use area, whereby commercial and residential properties adjoin and surround the application site. As such KC Environmental Health have been formally consulted, in order to assess any potential noise disturbance for the future occupiers of the dwelling.

It is therefore recommended that should the proposed change of use be approved a condition is attached to a permission, to secure the submission of a noise report in order to demonstrate that acceptable sound levels have been achieved in the proposed apartment. Subject to the appropriate condition, the proposal is considered to comply with Policies LP24 and LP52 of the Kirklees Local Plan and the aims of Chapter 12 of the NPPF.

5) Representations

No representations have been received as a result of the above publicity.

6) Other matters

In order to maximise sustainable transport at the application site KC Environmental Health have requested that an electrical charging point should be installed to serve the new flat. This is to support the transition to low emission vehicles as sets out within the West Yorkshire Low Emissions Strategy and Policies LP24 and LP51 of the Local Plan and therefore a condition regarding this would be attached to the decision notice, in the case of an approval.

7) Conclusion

The applicant has submitted insufficient information in order for the local planning authority to establish whether the proposed development complies with, any conditions, limitations or restrictions specified in this Part as being applicable to the development in question.

Recommendation – Refuse prior approval.

Decision Authorisation – Delegated Powers
Application Number – 2020/90811
Officer Recommendation – Refuse

1. The applicant has failed to demonstrate that the last use of the first floor of ‘’59 Market Street’’ falls within Class B1(a) as defined by the Town and Country Planning (Use Class) Order 1987 (as amended). As such the local planning authority is unable to confirm that the development is permitted by Class O of Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).

Plans and specifications schedule:

Plan Type	Reference	Version	Date Received
Location plan	-	-	11th March 2020
Existing floor plans	-	-	11th March 2020
Proposed floor plans	-	-	11th March 2020
Existing and proposed elevations	1745(P2)03	-	11th March 2020
Ground floor plan and site layout	1745(P2)01	-	11th March 2020
Flood risk assessment	Dated 19th May 2020	-	19th May 2020

Dated 8th June 2020