

**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: 2021/62/90257/E

Site Address: Batley Shopping Centre, Alfreds Way, Batley, WF17 5DR

Description: Erection of single storey extension to unit 11 to form a dark kitchen

Recommending Officer: Ian Lunn

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.

Paul Dowd

AUTHORISED OFFICER

Date: 20th September 2021

Officer Report

Site Description

Unit 11 Batley Shopping Centre is housed within a single storey building constructed of regular coursed natural stone under a flat roof. It is located approximately 145 metres to the south-west of the junction of Alfred's Way and Bradford Road in an identified Primary Shopping Area that lies within Batley Town Centre and adjoins Batley Market Place Conservation Area. The premises are currently vacant but were apparently last used for storage purposes.

Description of Proposal

Planning permission is sought to add a single storey extension to the rear (north-west) of the unit. This is to be used as a 'Dark Kitchen' with Unit 11 used to provide ancillary storage space. The agent has clarified that a Dark Kitchen is a professional kitchen that produces food solely for delivery. It contains the kitchen equipment and facilities needed to prepare food but has no dining area for customers.

When first submitted, the application form referred to the proposal as being for both a Dark Kitchen and a takeaway. However, the reference to the takeaway was an error and the agent has since clarified in writing that the proposal is solely for a Dark Kitchen.

History of negotiations/amendments received

The application as submitted showed the building with a flat roof. Amendments were subsequently secured that introduced a pitched natural blue slate roof to the structure.

Relevant Planning History

2006/91577 – Erection of extension and alterations to shopping centre (within a Conservation Area) – Approved 06/07/06 (Larger site that included these premises).

2018/93801 - Change of use of premises to include A1 and A3, erection of extension to house lift, internal and external alterations (Larger site that included this one) – Approved 05/03/19

2019/92661 - Change of use of premises to include A1 and A3, erection of extension to house lift, internal and external alterations (modified proposal) (Larger site that included this one) – Approved 29/11/19

2019/92854 – Change of use and internal and external alterations to form restaurant and bar (A3), two take away units (A5) and four retail units (A1) - Approved 29/11/19 (Permission relates to nearby premises rather than the application site itself).

Representations

To accord with the General Development Procedure Order neighbour letters were sent out to surrounding properties. These were posted on 16th March 2021 giving 35 days to comment (14 days more than the normal 21 days in this instance due to current Covid restrictions). The application was also advertised by way of a site notice and an advert in a local newspaper because it was felt that the development could potentially affect the settings of both the adjoining Batley Market Place Conservation Area and the nearby Grade II listed Zion Methodist Chapel. These were posted/inserted on 9th and 25th March 2021 respectively. No representations were received.

The agent has submitted a Planning, Design and Access Statement in support of their proposal, in which it is stated that:

- a) an approval would assist in the regeneration of the Town's shopping centre as it would provide a suitable alternative use in a Town Centre where the existing retail units have proved difficult to let and where there are empty units.
- b) this is an appropriate use for this sustainable commercial location. Whilst it is not specifically retail development it will add to the vibrancy, vitality and viability of the area complementing other uses and meeting the requirements of current local and national planning policy.
- c) the development will be in scale and keeping with its surroundings. Furthermore, whilst it will adjoin a Conservation Area it will not significantly impact upon or harm the integrity, character and quality of that area.
- d) the development will not give rise to any undue highway safety concerns. The building is sustainably located being readily accessible by walking, cycling and by public transport and with Town Centre car parking nearby. It is also unlikely to lead to a significant increase in vehicular movements to and from the site.
- e) a development of this nature, in this location, will not unduly affect the amenities of the occupiers of neighbouring premises.

Consultation Responses

KC Highways DM: No objections if the proposal is solely for a 'dark kitchen' with food prepared on the premises for delivery only. However, require a condition preventing any customers from visiting the premises in the interests of highway/pedestrian safety.

KC Conservation and Design: No objections. The extension will be small and is to be added to a modern shopping centre building. Consequently, it will not harm the setting of the adjoining heritage assets

KC Environmental Health: No objections, subject to conditions requiring the installation of a suitable system to filter cooking odours before they are

dispersed into the atmosphere, and to prevent fat, oil and grease from entering the drainage system.

The Coal Authority: No objections, subject to conditions requiring that further investigations are carried out to determine the presence or otherwise of shallow mine workings and requiring the carrying out of suitable remediation measures as part of the development if there are such workings present.

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 identified as being located within a Primary Shopping Area and Batley Town Centre in the Kirklees Local Plan (KLP).

Kirklees Local Plan:

LP1 Presumption in favour of sustainable development
LP2 Place Shaping
LP3 Location of New Development
LP7 Efficient and effective use of land and buildings
LP13 Town Centre Uses
LP14 Shopping Frontages
LP16 Food and Drink Uses and the evening economy
LP20 Sustainable Travel
LP21 Highways and Access
LP22 Parking
LP24 Design
LP28 Drainage
LP35 Historic Environment
LP51 Protection and Improvement of Local Air Quality
LP52 Protection and Improvement of Environmental Quality
LP53 Contaminated and Unstable Land

National Policies and Guidance:

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF), published 20 July 2021, 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 6	Building a Strong Competitive Economy
Chapter 7	Ensuring the Vitality of Town Centres
Chapter 8	Promoting Healthy and Safe Communities
Chapter 9	Promoting Sustainable Transport
Chapter 11	Making Effective Use of Land
Chapter 12	Achieving Well Designed Places
Chapter 14	Meeting the Challenge of Climate Change, Flooding and Coastal Change
Chapter 15	Conserving and Enhancing the Natural Environment
Chapter 16	Conserving and Enhancing the Historic Environment

Other

Highway Design Guide SPD (2019)

Assessment

The main considerations in this case are as follows:

- 1) Principle
- 2) Visual Amenity
- 3) Neighbour Amenity
- 4) Highway Safety
- 5} Land Stability (Coal Mining) Issues

Principle

A use of this nature would not normally be viewed as a 'Main Town Centre' use. It is more akin to a mixture of general industrial processes (food preparation) and storage and distribution (food delivery). The building is also to be located within both an identified Primary Shopping Area and a Town Centre where retail uses would normally primarily be sought. Unit 11 also forms part of a Primary Shopping Frontage.

However,

- a) this is a 'backland' site that does not seem to be in a particularly good position to sustain a retail use,
- a) it does not in itself form part of the identified Primary Shopping Frontage, and
- b) it is considered that a non-retail use such as this is unlikely to deflect trade from existing shops within the Town Centre.

In view of this it is considered, on balance, that, despite not being fully in accordance with policy, the proposal would not unduly harm the viability or vitality of the Town Centre and would generally be compatible with the area.

In addition to the above, policies LP1 and LP20 of the KLP and chapters 2 and 9 of the NPPF collectively place emphasis upon securing sustainable forms of development. It is considered that the proposal, the subject this

application, could reasonably be viewed as meeting this aim in so far as it seeks the extension of an existing building that is located within Batley Town Centre less than 400 metres and one kilometre respectively from the bus and railway stations.

In view of the above, the proposal is, on balance, considered to be acceptable in principle meeting the requirements of policies LP1, LP20, of the KLP and chapters 2 and 9 of the NPPF in this regard.

Visual Amenity

The new building will occupy a relatively secluded position to the rear of Tesco but will be visible from an adjoining car park and to users of walkways that connect that car park with Commercial Street. It will also adjoin Batley Market Place Conservation Area and will stand near to the Grade II listed Zion Methodist Church. However,

- a) there is no public vantage point from which the development would be viewed against the backdrop of either the Conservation Area or the Listed Building,
- a) it will not be unduly large being a single storey structure, measuring approximately 11.5 metres (length) x 4 metres (width) x 3.9 metres (height), that will generally be viewed against the backdrop of the larger adjoining buildings.
- b) it is to be added to a modern shopping centre building and constructed of matching regular coursed natural stone with a natural blue slate pitched roof.

In view of the above it is envisaged that the development will not harm the setting of the adjoining heritage assets and it is considered acceptable in both design and scale terms generally. The proposal has been considered by the Council's Conservation and Design Team who support this view.

In view of the above the proposal is considered acceptable in visual amenity terms reasonably satisfying the requirements of policies LP24 and LP35 of the KLP and chapters 12, 15 and 16 of the NPPF in this regard.

Neighbour Amenity

a) Light

The new building will be single storey and will immediately adjoin the blank walls of adjoining buildings on three sides with the fourth side open to the car park. It should not therefore unduly affect the level of light that the surrounding premises currently receive.

a) Overlooking

The proposal is for commercial premises, so overlooking should not be an issue. The windows and door to be formed within the new building will in any case face blank walls to the immediate north-east.

b) Overdevelopment

The proposal will lead to most of the defined application site being built on. However, since the adjoining units forming part of the shopping centre occupy similar 'footprints' it is considered that it would be difficult to sustain a refusal of the application on 'overdevelopment' grounds in this instance.

c) Noise/Odour

Developments involving food preparation can potentially generate both noise and odour and this can cause disturbance to neighbouring premises. However, it is not envisaged that such issues will arise in this instance given that:

- a) this site lies within the Town Centre and the surrounding buildings are largely in commercial use.
- a) it is proposed to operate the business at what are considered to be reasonable times of the day namely 9am to 11pm Monday to Saturday and 10am to 11pm on Sundays and Bank Holidays.
- b) a condition can reasonably be imposed on any approval requiring that a suitable system is installed within the building to filter cooking odours before they are discharged into the atmosphere.

The proposal has been considered by the Council's Environmental Health Service who raise no objections to it provided that a condition of the type outlined in (c) is imposed along with a further condition preventing fat, oil and grease from entering the drainage system. Conditions to this end are therefore recommended.

In view of the above, and subject to the imposition of the conditions outlined above, it is considered that the development is unlikely to have an unduly adverse effect upon the amenities currently enjoyed by the occupiers of the surrounding premises. On this basis it is considered that it will reasonably meet the requirements of policies LP24, LP51 and LP52 of the KLP and chapter 15 of the NPPF in neighbour amenity terms.

Highway Safety

The building will not benefit from its own dedicated parking facilities. However, it will occupy a sustainable Town Centre location near to existing car parks and it will also be accessible by way of a variety of means of other transport. Furthermore, as the premises are now to be used solely as a Dark Kitchen with no take-away element the development should not now attract visiting customers. It is not therefore felt that the proposal will cause any undue parking issues.

The proposal has been considered by the Council's Highways Service who consider that it will be acceptable if operated as now proposed. However, they wish to see a condition imposed designed to ensure that customers do not visit the premises. The agent has confirmed that their client is agreeable to this and a condition to this end is therefore recommended.

In view of the above, and subject to the imposition of a such a condition, it is considered that the proposal will be acceptable in highway safety terms reasonably satisfying the requirements of policies LP21 and LP22 of the KLP and of the Highway Design Guide SPD (2019) in this regard.

Land Stability (Coal Mining) Issues

The applicant has submitted a Coal Mining Risk Assessment with this application which concludes that there is a potential risk to the development from shallow mine workings. It therefore recommends that further investigations are carried out to determine whether such workings are present and, if they are, that suitable remediation measures are undertaken to ensure the safety and stability of the new building. This assessment has been considered by the Coal Authority who agree with its findings. Since the assessment recommends that further investigation is carried out, they recommend that:

- a) a condition is imposed to this end which also includes for the carrying out of suitable remediation measures should these be deemed necessary, and
- a) a further condition is imposed requiring formal confirmation from the applicant of the methods and findings of the intrusive site investigations and, if relevant, that remediation works have been satisfactorily completed.

Conditions to this end are, therefore, recommended.

Subject to the imposition of conditions of this nature it is considered that the proposal will reasonably satisfy the requirements of policy LP53 of the KLP and chapter 15 of the NPPF in land stability terms.

Conclusion

The proposal is for a form of sustainable development that, on balance, is considered appropriate for this Town Centre location. Furthermore, subject to the imposition of conditions, it is considered that the development will reasonably safeguard the visual amenity of the area (including the settings of the adjoining heritage assets) the amenities of surrounding premises and highway safety. It is also considered that the development can be made safe for human habitation. The proposal is, therefore, considered to be in accordance with the requirements of policies LP1, LP2, LP3, LP7, LP13, LP14, LP16, LP20, LP21, LP22, LP24, LP28, LP35, LP51, LP52 and LP53 of the KLP, chapters 2, 6, 7, 8, 9, 11, 12, 14, 15 and 16 of the NPPF and the provisions of the Highway Design Guide SPD (2019).

Recommendation: Approve

Decision Authorisation - Delegated Powers

Application Number: 2021/90257

Officer Recommendation: Approve

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 to ensure the satisfactory appearance of the development on completion, and to accord with Policies LP1, LP2, LP3, LP7, LP13, LP14, LP16, LP20, LP21, LP22, LP24, LP28, LP35, LP51, LP52 and LP53 of the Kirklees Local Plan, Chapters 2, 6, 7, 8, 9, 11, 12, 14, 15 and 16 of the National Planning Policy Framework and the provisions of the Highway Design Guide SPD (2019).

3. The external walls and roof of the approved building shall be constructed of regular coursed natural stone and natural blue slate. These materials shall match in type, colour, texture, and shall be laid in a manner to match, the stone and slate used in the construction of the adjoining building. Following the completion of the development these materials shall be satisfactorily retained at all times.

Reason: In the interests of visual amenity, in accordance with the requirements of Policies LP24 and LP35 of the adopted Kirklees Local Plan and Chapters 12, 15 and 16 of the National Planning Policy Framework.

4. No customers shall visit the premises at any time.

Reason: In the interests of highway and pedestrian safety, in accordance with the requirements of Policies LP21 and LP22 of the Kirklees Local Plan and the provisions of the Highway Design Guide SPD (2019).

5. Details of the proposed means of extracting cooking odours from the premises prior to them being discharged into the atmosphere shall be submitted to the Local Planning Authority for its written approval. The submitted details shall include the following:

- A risk assessment for odour which considers amount and type of food that will be cooked together with the proposed dispersion of odours and proximity of receptors likely to be affected by any cooking odours.
- Based on the risk assessment, details of the proposed methods of odour control and dispersion of any extracted odours.
- Details showing the proposed location of all the major components of the extract system.
- The noise mitigation measures that will be incorporated in the extract system and details of the likely resulting noise levels that will be caused by operation of the extract system, in particular how loud it will be at nearby noise sensitive locations.

- The proposed ongoing maintenance schedule that will be carried out to ensure that the extract system continues to effectively control odours and not cause excessive noise.

The approved scheme shall be implemented in full before the development hereby approved is first brought into use and shall thereafter be satisfactorily retained at all times.

Reason: In the interests of visual amenity and to safeguard the amenities of the occupiers of surrounding premises from undue odour, in accordance with the requirements of Policies LP24 and LP52 of the Kirklees Local Plan and Chapter 15 of the National Planning Policy Framework.

6. A scheme to prevent fat, oil, and grease generated by the development from entering the drainage network shall be submitted to the Local Planning Authority for its written approval. The approved scheme shall be implemented in full before the development hereby approved is first brought into use and shall thereafter be satisfactorily retained at all times.

Reason: To avoid pollution of the drainage system in accordance with the requirements of Policies LP28 and LP52 of the Kirklees Local Plan and Chapter 15 of the National Planning Policy Framework.

7. No development shall commence (excluding the demolition of any existing structures) until a scheme of intrusive investigations has been carried out on site to establish the risks posed to the development by past shallow coal mining activity. Should these demonstrate that remediation works/mitigation measures are required to address issues of land instability those works shall be implemented in full before any other part of the development hereby approved is commenced. The intrusive investigations and remediation works shall be carried out in accordance with authoritative UK guidance.

Reason: To ensure the safe occupation of the site by ensuring it is stable for development, in accordance with the requirements of Policy LP53 of the Kirklees Local Plan and Chapter 15 of the National Planning Policy Framework.

8. A signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made, safe and stable for the approved development shall be submitted to the Local Planning Authority for its written approval. This document shall confirm the methods and findings of the intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity. The development hereby approved shall not be brought into use until the submitted statement/declaration has been formally agreed by the Local Planning Authority.

Reason: To ensure the safe occupation of the site by ensuring it is stable for development, in accordance with the requirements of Policy LP53 of the Kirklees Local Plan and Chapter 15 of the National Planning Policy Framework.

NOTE: With reference to Condition 5, detailed advice is available in “Control of Odour and Noise from Commercial Kitchen Exhaust Systems” by EMAQ Sep 2018 which is an update of “Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems” by DEFRA 2005

NOTE: It is recommended that prior to development commencing the applicant should contact the Food Safety Team of Environmental Services to arrange an advice visit to discuss food safety and hygiene requirements including an appropriate layout. The Food Safety team can be contacted on 01484 22100 (ask for food safety) or by email at food.safety@kirklees.gov.uk

NOTE: Under the Coal Industry Act 1994 any intrusive activities, including initial site investigation boreholes, and/or any subsequent treatment of coal mine workings/coal mine entries for ground stability purposes require the prior written permission of The Coal Authority, since such activities can have serious public health and safety implications. Failure to obtain permission will result in trespass, with the potential for court action. If you are proposing to undertake such work in the Forest of Dean local authority area our permission may not be required; it is recommended that you check with us prior to commencing any works. Application forms for Coal Authority permission and further guidance can be obtained from The Coal Authority's website at: www.gov.uk/get-a-permit-to-deal-with-a-coal-mine-on-your-property

Plans and specifications schedule:

Plan Type	Reference	Version	Date Received
Location Plan	A(SK)-01		09/03/21
Existing Site Layout Plan	A(SK)-02		09/03/21
Existing Elevations	A(SK)-03		09/03/21
Proposed Site Layout Plan	A(SK)-04		09/03/21
Proposed Floor Plans	A(SK)-05	A	20/09/21
Proposed Elevations	A(SK)-06	A	16/09/21

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 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 and agent in dealing with the application. Discussions with the latter have led to the scheme being amended and those revisions have led to the recommendation of approval.

Report Dated:

20.09.21