

**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: 2021/62/90890/E

Site Address: Wilman And Son, 1, Market Place, Batley, WF17 5DA

Description: Alterations to convert estate agent to restaurant/cafe
(Class E) (Listed Building within a Conservation Area)

Recommending Officer: Callum Harrison

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: 05-May-2021

Officer Report

2021/90890 - Wilman And Son, 1, Market Place, Batley, WF17 5DA

Site Description

1 Market Place is a Grade II listed three-storey building dating to c1874 and constructed in stone with a well-detailed ashlar façade and a timber shop front. It is an end terraced unit within a terrace of 8 shops built on a curved and sloping site within a prominent location in the Batley Market Place Conservation Area. The side elevation is in coursed stonework and the rear faces a yard and parking area. The last use of the property was as an estate agent at the ground floor level.

Description of Proposal

The application is seeking permission for the alterations to convert estate agent to a restaurant/café (Listed Building within a Conservation Area). Previously, these uses were within the A2 and A3 classes. However, they both now fall within Class E of the revised Use Classes Order.

The application proposes alterations to the interior and exterior of the building. The proposed works include stripping out finishes; the repair of the existing timber shop front; the replacement of the existing ground floor window with a smaller timber sash window; the insertion of a new rear door; the installation of a black flue from above the ground floor window to above eaves level; erection of a 1.8m high black metal railing; and a bin store is proposed in the rear yard area.

History of Negotiations / Amendments Received

Given that the works are to a listed building, officers sought some more information on the proposed works and some minor amendments. The additional information was shown on amended plans received on 23rd April 2021.

Relevant Planning History

2000/93769 - Listed Building Consent for Erection of 1 No Illuminated Fascia Sign and 1 No. Non-Illuminated Fascia Sign was approved.

95/90609 - Alterations to Shop Frontage was approved.

Representations

The application was advertised by neighbour notification letters, a site notice and in the press. Final publicity expired on 23rd April 2021. No representations were received.

Consultations

KC Conservation and Design – No objections, subject to a condition requiring all flue brackets to be fixed into mortar joints and not into the masonry.

KC Environmental Health – No objections subject to conditions relating to the submission of a kitchen extract scheme; the submission of a pollution prevention scheme; hours of use and construction working hours.

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 set out a secondary shop frontage within the Batley Town Centre as allocated within the Kirklees Local Plan. The site is also a listed building set within the Batley Market Place Conservation Area.

Kirklees Local Plan (KLP):

LP1 – Achieving sustainable development
LP2 – Place shaping
LP13 – Town Centre Uses
LP14 – Shopping Frontages
LP21 – Highways and Access
LP22 – Parking
LP24 – Design
LP35 – Historical Environment
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 2 – Achieving sustainable development
Chapter 6 – Building a strong, competitive economy
Chapter 7 – Ensuring the vitality of town centres
Chapter 12 – Achieving well-designed places
Chapter 15 – Conserving and enhancing the natural environment
Chapter 16 – Conserving and enhancing the historic environment

Assessment

1. Principle of Development and Impact on Visual Amenity

Town Centre Use

Policy LP13 of the KLP states the list of uses that are considered acceptable in the principal town centre. Leisure uses such as restaurants and cafes are considered acceptable within a designated town centre. Given this, the proposal is acceptable regarding the principle of development within the Town Centre.

Secondary Shop Frontage

Policy LP14 of the KLP states: 'Frontages within and adjacent to the Primary Shopping Area in Principal and Town Centres that are not designated as Primary Shopping Frontages. These frontages are characterised by a mix of retail and other 'main town centre uses'.

Within the Secondary Shopping Frontages as defined on the Town Centre Maps, at street level, proposals for retail and other main town centre uses will be acceptable provided they meet criteria a, taking into account criteria b and c:

- a. whether the proposal would lead to a dominance of non-retail uses in a particular frontage which would undermine the retail core and function of the Primary Shopping Area; Kirklees Local Plan - Strategy and Policies 77 9 Retailing and town centres
- b. 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
- c. in all cases proposals and changes of use shall seek to either retain, enhance or replace to improve shop front design and layout.'

In this instance, the shop frontages close to the application site would still host a substantial number of retail units. The proposal is also set outside of the Primary Shopping Area. Given this, the proposal would integrate well with the town centre, without undermining the retail core or the Primary Shopping Area. The proposed use would complement neighbouring uses by providing the potential for linked trips, whilst the application would also retain and enhance the existing shop front. Given this, the principle of development for the change of use and associated works also accords with policy LP14 of the KLP.

Impact on Visual Amenity and the Listed Building (within the Conservation Area)

The application is for works to a listed building in a Conservation Area. Under Section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990, Local Planning Authorities must, in considering whether to grant listed building consent for any works, have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest that it possesses. In this context preservation means not harming the interests of the building as opposed to keeping it unchanged. Furthermore Chapter 16 of the NPPF states that in determining applications, local planning authorities should take account of the desirability of sustaining and enhancing the significance of heritage assets. If harm would result, this should not be allowed without a proportionate justification. This approach is supported by policy LP35 of the Local Plan which also covers the impact on the Conservation Area. LP35 of the KLP states that 'proposals which would remove, harm or undermine the significance of a non-designated heritage asset, or its contribution to the character of a place will be permitted only where benefits of the development outweigh the harm having regard to the scale of the harm and the significance of the heritage asset.'

Policy LP24 of the Local Plan is the policy responsible for the general design of development. Therefore, in this instance, it intertwines with policy LP35 of the KLP. Policy LP24 states that 'Proposals should promote good design by ensuring: a. the form, scale, layout and details of all development respects and enhances the character of the townscape, heritage assets and landscape.'

By virtue of part of the application being a change of use, this itself will not materially adversely impact upon the listed building or the Conservation Area. The alterations to the interior and exterior of the building, including stripping out finishes and altering the shop front, are minimal and include the removal of later partitions and minor alterations to areas of low significance and are, therefore, acceptable. The repair of the existing timber shop front is supported, as this will improve the facade, with signage illuminated by grey swan neck light fittings fixed to the timber shop front and not into the masonry.

The rear elevation is only visible from Back Providence Street and has relatively low significance, therefore the proposed interventions to the rear elevation are acceptable. The harm caused by the installation of a flue is mitigated by finishing it in black and fixing it to the rear elevation, and the public benefit of repairing and refurbishing the shop front and bringing this vacant building into use is considered to outweigh this slight harm.

Subject to a condition requiring all flue brackets to be fixed into mortar joints and not into the masonry, the principle of development to a listed building in the Conservation Area is considered acceptable, as the proposal complies with policies LP24 and LP35 of the KLP and Chapter 16 of the NPPF.

2. Impact on Residential Amenity

Policy LP24 of the KLP states that proposals must maintain a good standard of residential amenity for neighbouring occupiers. Council records indicate

that the floors above the proposed restaurant/café are residential accommodation. Given the modest size of the floorspace, the proposed use will likely not cause any detrimental disturbance to the residential accommodation above.

However, to ensure that the proposal would not impact on the residential amenity of the flats above, through noise and general disturbance, a condition relating to hours of operation shall be inserted in the permission. Also, details of a kitchen extract system have not been provided. To ensure that noise and odours have no detrimental impact upon the flats above, a condition will be imposed for details of a kitchen extract system shall be submitted and approved by the LPA.

Subject to the conditions mentioned above, which will ensure the proposal accords with policies LP24 and LP52 of the KLP, the proposal is considered acceptable regarding its impact on residential amenity.

3. Impact on Highway Safety

There were no trip generation details provided with the application and it is expected that the trips created by the proposal to be considerably greater than the existing retail use. However, the location of the site is within a sustainable town centre location, with excellent public transport links and public car parking. Given this, the proposal is considered acceptable in terms of Highway Safety and it accords with policies LP21 and LP22 of the KLP.

4. Other Matters

Environmental Quality

As stated above, limited kitchen details have been submitted although a scheme to prevent fats, oils, and grease entering the drainage network from commercial food preparation and dish-washing areas has been submitted. This shall be secured by condition. Subject to this condition, and a condition relating to the submission of a kitchen extract system, as discussed earlier in this report, the proposal is considered acceptable in terms of policy LP52 regarding the protection and improvement of environmental quality.

5. Representations

None.

6. 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.

As set out above, 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

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 LP13, LP14, LP21, LP22, LP24, LP35 and LP52 of the Kirklees Local Plan, and the aims of the National Planning Policy Framework.

3. The use hereby permitted shall not be open to customers outside the hours of:

- 0800hrs to 2300hrs Monday to Sundays incl. Bank Holidays

and there shall be no deliveries to, or dispatches from the premises outside these

hours. No deliveries shall take place on Sundays or Bank Holidays.

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.

4. Before the development commences, details of a kitchen extract system shall be submitted to and approved in writing by the Local Planning Authority. The details shall provide the following information:

- 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.

Before the development commences, the approved extract system shall be installed and thereafter retained and maintained in accordance with the approved details.

Reason: This pre-commencement condition is necessary to ensure the proposed development does not cause harmful odour pollution (e.g. within either a public area or at neighbouring premises) 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.

5. Development shall not commence until a scheme to prevent fats, oils, and grease entering the drainage network serving commercial food preparation and dish-washing areas has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented prior to first operation of the development and shall be retained throughout the lifetime of the development.

Reason: This pre-commencement condition is necessary ensure the provision of adequate and sustainable systems of drainage are employed, in the interests of amenity, environmental well-being and to accord with Policy LP52 of the Kirklees Local Plan and Policy BE1(iv) and the National Planning Policy Framework.

6. Noisy construction related activities shall not take place outside the hours of:

07.30 to 18.30 hours Mondays to Fridays, 08.00 to 13.00 hours, Saturdays, with no noisy activities on Sundays or Public Holidays.

Reason: To ensure that the development does not materially harm the residential amenity of neighbouring occupiers and as to accord with LP24 of the Kirklees Local Plan.

7. Notwithstanding the plans hereby approved, all flue brackets shall be fixed into mortar joints and not into the masonry on the building.

Reason: To ensure the Listed Building is appropriately protected and not harmed by the development hereby approved, and as to accord with Policy LP35 of the Kirklees Local Plan and Chapter 16 of the National Planning Policy Framework.

Note: Kirklees Council has powers under Section 60 of the Control of Pollution Act 1974 to control noise from construction sites and may serve a notice imposing requirements on the way in which construction works are to be carried out. It has additional powers under Sections 80 of the Environmental Protection Act 1990 to prevent statutory nuisance including noise, dust, smoke and artificial light and must serve an abatement notice when it is satisfied that a statutory nuisance exists or is likely to occur or recur. Failure to comply with a notice served using the above-mentioned legislation would be an offence for which the maximum fine on summary conviction is unlimited.

Plans and specification table:

Plan Type	Reference	Version	Date Received
Location Plan	20163-D01-A	1	03/03/2021

Proposed Site / Block Layout	20163-D02-B	2	23/04/2021
Grouped Plans and Elevation	20163-D03-B	2	23/04/2021
Supp Info - General	20163-A Planning Statement	1	03/03/2021

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. Given that the works are to a listed building, officers sought some more information on the proposed works and some minor amendments. The additional information was shown on amended plans received on 23rd April 2021.