

**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.	2021/CL/90950/W
Site Address	Waverley House, Waverley Street, Huddersfield, HD1 5NA
Description	Prior approval for change of use from office (B1) to 9 residential units
Recommending Officer	Stuart Howden

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.**

Kevin Walton

AUTHORISED OFFICER

Date: 18-May-2021

Officer Report

Application No: 2021/90950

Site: Waverley House, Waverley Street, Huddersfield, HD1 5NA

Proposal: Prior approval for change of use from office (B1) to 9 residential units

Site Description

The site comprises Waverley House, which is a generously sized 2 and a half storey building (with a basement) constructed from stone under a slate roof and dates back to the late 19th Century. The building is sited on a prominent corner plot to the west of Portland Street and south of Waverley Road, and is centrally located within Huddersfield. Some on-site parking (5 spaces) is situated between Waverley Road and the front elevation of the property. The property sits within a soft landscape garden area.

The building appears to be vacant at the time of writing. It appears that the majority of the building has been in a B1a use, but that part of the first floor was used by the Driving Standards Agency as a driving test centre which is considered to be a sui generis use.

To the rear/south of the site is an access lane leading to the rear of residential properties further to the south. To west of the site is Waverley United Reformed Church.

The site is within Greenhead Park/New North Road Conservation Area. The building is not listed but is within close proximity to a number of listed buildings.

Description of Proposal

The proposal is for prior approval under Part 3 Class O of the General Permitted Development Order (GPDO) 2015 (as amended) for change of use from B1(a) (offices) to C3 (dwellinghouses). The proposed use is to consist of 9 apartments. No floor plans or elevations have been submitted, therefore details of the proposed apartments are extremely limited.

History of negotiations/amendments received

Given the extremely limited information submitted alongside the application, it was considered that requesting the additional information that was required would have likely led to delays in the processing of the application. The applicant and the applicant's agent have also previously been informed of the requirements of such a prior approval application (under the previous application at the site). Paragraph 41 of the National Planning Policy Framework stresses the importance of determining applications in a timely manner.

Relevant Planning History

2020/93614 – Prior approval for change of use from office (B1) to 13 residential units (within a Conservation Area) - Refused

2020/91621 – Works to trees within a conservation area – Granted.

2017/91123 – Work to tree(s) in a conservation area – Part granted/part refused.

2000/91571 – Change of use from driving theory test centre to educational – schedule D1 (within a conservation area) – Approved.

87/02157 – Change of use of caretakers flat to social services facilities (including use of St James Church car park) (within a conservation area) – Approved.

As listed above a prior approval application has previously been submitted for this site (2020/93614), and was refused on 2nd February 2021 on the following grounds:

1. The application would fail to provide the future occupants of the proposed residential units with an acceptable level of amenity as not all habitable rooms within the dwellinghouses would be served by adequate natural light. Therefore the proposal fails to comply with the requirements of paragraph O.2(e) and the application site is unable to take advantage of the general grant of Planning Permission provided by Class O, Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) by virtue of paragraph 2(A) of Class W.
2. The application has failed to provide floor plans indicating the dimensions of each room and the position and dimensions of windows, doors and walls of the dwelling houses. The proposal therefore fails to meet all of the requirements of Paragraph W(2) Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Under this current application, the number of residential units proposed has been reduced to 9 from 13 following the refusal of 2020/93614, but fewer details have been submitted under this application (i.e. no floor plans and elevations). Furthermore, the sui generis use of the driving test centre was omitted from this previous application.

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 (England) 2015, Schedule 2 Part 3 Class O as amended is relevant. 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.

Whilst offices now fall technically under a E(c) use (since the 1st September 2020) as a result of an amendment to the Use Class Order, for applications for Prior Approval, the Use Classes in effect prior to 1st September 2020 will be the ones used until the end of July 2021.

From 6th April 2021, dwellings delivered through permitted development rights also have to meet Nationally Described Space Standards, but this criteria does not apply to prior approval applications submitted before 6th April 2021 (see the Town and Country Planning (General Permitted Development) (England) (Amendment) Regulations 2020).

Whilst part of the building is within an office (B1(a)) Use Class not all of the building is within such a use (part of the first floor was used by the Driving Standards Agency as a driving test centre which is considered to be a sui generis use; and this is considered to be the lawful use of part of the building). The site plan covers the whole building and does not omit the driving test centre (the sui generis use), therefore the proposal does not constitute permitted development under Part O of the GPDO, and prior approval cannot be granted.

Despite the above, for completeness, the proposal will also be assessed against 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:

(a) the building is on article 2(5) land	Pass
(b) the building was not used for a use falling within Class B1(a) (offices) of the Schedule to the Use Classes Order— (i) on 29th May 2013, or (ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use	Fail*
(c) omitted	N/A
(d) the site is, or forms part of, a safety hazard area	Pass
(e) the site is, or forms part of, a military explosives storage area	Pass
(f) the building is a listed building or is within the curtilage of a listed building	Pass
(g) the site is, or contains, a scheduled monument.	Pass

*Paragraph O.1(b) of the GPDO stipulates that development is not permitted if the building was not used for a used falling within class B1(a) offices on 29th May 2013. Whilst the majority of the building appeared to be in a B1 use at this time, from the evidence available to Officers, it appears likely that part of the building was in this was in a sui-generis use (i.e. used by the Driving

Standards Agency as a driving test centre) at this time. In light of this it is considered that the proposal does not comply with the requirements of Paragraph O.1 (as amended) and that the proposal does not constitute permitted development

Notwithstanding the above Paragraph 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:

Conditions

“O.2 Development under Class O is permitted subject to the condition that before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required as to—

- a) transport and highways impacts of the development;*
- b) contamination risks on the site;*
- c) flooding risks on the site;*
- d) impacts of noise from commercial premises on the intended occupiers of the development;*
- e) the provision of adequate natural light in all habitable rooms of the dwellinghouses.”*

and the provisions of Paragraph W (prior approval) apply in relation to that application

Paragraph W outlines the 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 by site notice.

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).

Kirklees Local Plan (LP):

- **LP 21** – Highway Safety and Access
- **LP 22** – Parking
- **LP 24** – Design
- **LP 52** – Protection and Improvement of Environmental Quality
- **LP 53** – Contaminated 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 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 15** – Conserving and Enhancing the Natural Environment

Representations

Final publicity date Expires:

Neighbour notification letters expired on 29th April 2020.

2 representations have been received objecting to the application. The comments raised are summarised below, but available to see in full on the Council's Planning Website:

- The plan labelled the area 'existing car park' has recently been added (without permission) and was previously green space;
- Access from Back Fitzwilliam Street is not suitable;
- Needs to fulfil the social and environmental requirements of planning;
- Lack of information in submission;
- Work has begun internally.

Consultation Responses

Below is a summary of responses from consultees. Full comments are available to view on the Council's Planning Website.

KC Environmental Health: No comments received.

KC Highways Development Management: The application provides insufficient information in relation to the access for the car park and its layout, and clarity is also required for the parking area to the north of the site with access from Waverley Road.

KC Lead Local Flood Authority: No comments received.

Assessment

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

- 1) Transport and highways impacts of the development
- 2) Contamination risks on the site

- 3) Flooding risks on the site
- 4) Impacts of noise from commercial premises on the intended occupiers of the development
- 5) The provision of adequate natural light in all habitable rooms of the dwellinghouses.
- 6) Other matters
- 7) Representations
- 8) Conclusion

1 – Transport and highways impacts of the development:

There are 5 off-street parking spaces to the front of the site with access from Waverley Road. However, the application does not make it clear whether these spaces will be available for the residents of the proposed dwellings or the driving test centre.

Whilst a plan provided by the applicant's agent notes that there is an existing car park to the west of the building, when Officers visited the site in November 2020 this was not the case as this was a soft landscaped area. This area has now been hard surfaced and not in connection with any current office. As such this appears to be an engineering activity which was carried out without the benefit planning permission.

The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) does not make provision for engineering operations as part of the change of use permissible under Class O. As the proposed parking area to the side of the building does not benefit from planning permission, Officers are of the view that this area cannot be considered as car park under this prior approval application. Given this and that the status of the 5 parking spaces to the front of the site has not been clarified, there is no guarantee of any on-site parking to serve the occupiers of the proposed residential dwellings. Whilst it is accepted that the development is within a sustainable location, close to the centre of Huddersfield, details of the number of bedrooms of the proposed units has not been provided therefore the required parking provision for the proposal is unclear. On this basis, Officers cannot be confident that adequate off-street parking would be provided for such a development and the proposal could therefore result in an increase in on-street parking on well-used highways, thereby increasing the likelihood of conflict between highway users.

In addition to the above, details regarding the access to this car park which does not benefit from planning permission are unclear (i.e. whether it is from Waverley Street or Back Fitzwilliam Street), and no details have been provided regarding the proposed layout or the number of spaces. Further to this, and as noted by Kirklees Highways Development Management, access from Back Fitzwilliam Street would appear to be too narrow and may not allow for comfortable turning and manoeuvring or two vehicles to pass at the entrance.

The proposal is therefore contrary to Policies LP21 and LP22 of the Kirklees Local Plan and Chapter 9 of the NPPF.

In terms of the bin storage, this is proposed to be sited to the rear of the building. Whilst Officers have no objection to this in principle, it is unclear from the plans whether the bin store area proposed provides adequate space for the necessary amount of bins required for such a development and further details of the bin store could be conditioned if prior approval were to be granted.

2 – Contamination risks on the site:

The site is not known to be potentially contaminated, and it is considered that owing to the nature of the development, a change of use, there are no significant contamination issues. The site is deemed to be in a high risk area for coal mining legacy, but again this is not a significant concern as it is a change of use of an existing building.

3 – Flooding risks on the site:

The site is located within Flood Zone 1 (land assessed as having a less than 1 in 1,000 annual probability of river or sea flooding (<0.1%)), which has the lowest risk of flooding. The proposed residential use would be appropriate within Flood Zone 1 and flooding is not a cause for concern in planning terms.

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

Under the previous application to change the use of the building to residential, the Council's Environmental Health Department requested a noise assessment and mitigation scheme given the potential for noise as the area is mixed residential/commercial and off a busy main road. However, noise from the highway is not a consideration in this case, and it is solely noise from commercial premises which can be considered. The nearby commercial premises are not considered to be noise generators given that they consist of offices, a church, a hall and a health service therefore a noise report is not considered necessary and the impacts of noise from commercial premises on the intended occupiers is considered to be acceptable, in compliance with Policy LP24(b) and LP52 of the Kirklees Local Plan and Chapter 15 of the NPPF.

5 – The provision of adequate natural light in all habitable rooms of the dwellinghouses:

This stipulation was included to the GPDO in 2020. Part 3, Paragraph W states that *“Where the application relates to prior approval as to adequate natural light, the local planning authority must refuse prior approval if adequate natural light is not provided in all the habitable rooms of the dwellinghouses.”*

This more recent stipulation has resulted in Paragraph W(2) being amended to state in relation to development proposed under Class O of Part 3, the application 'must be' accompanied by: *"a floor plan indicating the dimensions and proposed use of each room, the position and dimensions of windows, doors and walls, and the elevations of the dwellinghouses."*

Floor plans and elevations have not been submitted, therefore Officers do not have details of the proposed apartments and specific rooms (including dimensions) as well as the position and dimensions of windows, doors and walls. Therefore, the proposal is not in compliance with this above requirement of Part W(2) and it is considered that Officers cannot grant prior approval for this application. Furthermore, without this information, it has not been demonstrated that all the habitable rooms of the dwellinghouses proposed would be served by adequate natural light. The proposal is therefore considered to fail to comply with this condition of Class O, Part 3 of the GPDO.

6 – Other matters:

Officers are aware that some protected trees within the site have been felled. Whilst not a consideration of this application, the Council's Arboriculturalist is investigating the matter.

7 - Representations:

2 representations have been received objecting to the application. Any comments not addressed above, will be commented on below:

Comment: Work has begun internally.

Officer Response: If this is the case, this does not require planning permission.

Comment: Lack of information in the submission.

Officer Response: As discussed in the above assessment, there is a lack of information in this submission, and the lack of adequate information constitutes a recommended reason for refusal.

Comment: The proposal needs to fulfil the social and environmental requirements of planning.

Officer Response: Under such an application, a limited number of considerations can be assessed (i.e. it is not a full planning application), but the above assessment has addressed these matters.

8 - Conclusion:

Part of this building subject of this propose change of use is not within a B1 use therefore the proposed development does not constitute permitted development under Class O, Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development Order) (England) Order 2015 (as amended).

In addition, the proposed development fails to constitute permitted development given that the evidence available to the Council indicates that part of this building was not used as B1 use class on 29th May 2013, thereby failing to comply with Paragraph O.1, Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development Order) (England) Order 2015 (as amended)

The proposal also fails to meet all of the requirements of Paragraph W(2) Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Furthermore, the proposal would fail to comply with Condition O.2(e) of Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development Order) (England) Order 2015 (as amended)

Recommendation

Refuse

Decision Authorisation - Delegated Powers

Application Number: 2021/90950

Officer Recommendation: Refuse

Reasons for Refusal:

1. Part of this building subject of this proposed change of use is not within a B1(a) use as defined by the Town and Country Planning (Use Class) Order 1987 (as amended) therefore the proposed development does not constitute permitted development under Class O, Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development Order) (England) Order 2015 (as amended). In addition, the proposed development fails to constitute permitted development given that the evidence available to the Council indicates that part of this building was not used as B1(a) use class on 29th May 2013 and it has not been demonstrated that this was the case as required by Paragraph O.1, Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development Order) (England) Order 2015 (as amended)
2. The application has failed to provide elevations and floor plans, as well as details of the proposed apartments and specific rooms (including dimensions, the position and dimensions of windows, doors and walls). The proposal therefore fails to meet all of the requirements of Paragraph W(2) Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Furthermore, without this information, it has not been demonstrated that all the habitable rooms of the dwellings proposed would be served by adequate natural light. The proposal therefore fails to comply with condition O.2(e) of Class O, Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development Order) (England) Order 2015 (as amended).
3. Details regarding on-site parking to serve the proposed development and the size of the proposed residential units are insufficient and it is not clear whether there would be adequate on-site parking to serve the occupiers of the proposed dwellings as well as the staff and visitors to the driving test centre. As a result of this, there could be potential for such a development to result in an increase in on-street parking on well-used highways, thereby increasing the likelihood of conflict between highway users, detrimental to the safety and convenience of highway users, including pedestrians. The proposal is therefore contrary to Policies LP21 and LP22 of the Kirklees Local Plan and Chapter 9 of the National Planning Policy Framework, and therefore fails to comply with Condition O.2(a) of Class O, Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development Order) (England) Order 2015 (as amended).

NOTE: The hard surfaced area to the west of the building, which is annotated as 'existing car park' on the submitted site location plan at scale of 1:500 on A4 paper (which appears to have been constructed in late 2020), does not appear to benefit from planning permission. This appears to be an engineering activity and it is considered that this is element requires planning permission. The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) does not make provision for engineering operations as part of the change of use permissible under Class O or under Part 7, Class G if not laid for the purposes of any office. As the proposed parking area to the side of the building does not appear to benefit from planning permission, Officers are of the view that this area cannot be considered as car park under this prior approval application (planning permission is required for this feature).

NOTE: From 6th April 2021, dwellings delivered through permitted development rights also have to meet Nationally Described Space Standards. Any applications submitted after this date will also have to comply with this criteria (see the Town and Country Planning (General Permitted Development) (England) (Amendment) Regulations 2020).

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Application Form	-	-	24 th March 2021
Location Plans at a Scale of 1:500 and 1:1250 on A4 paper	-	-	9 th March 2021
Site Location Plan at a scale of 1:500 on A4 paper	-	-	9 th March 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 Authority have, 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 the extremely limited information submitted alongside the application, it was considered that requesting additional information that was required would have likely led to delays in the processing of the application. The applicant and the applicant's agent have also previously been informed of the requirements of such a prior approval application (under the previous application at the site). Paragraph 41 of the National Planning Policy Framework stresses the importance of determining applications in a timely manner.

Report Dated: 04.05.2021

