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:	2021/62/92539/W
Site Address:	394, Bradford Road, Fartown, Huddersfield, HD2 2QZ
Description:	Change of use from retail to cafe/takeaway (mixed Class E/sui generis use)
Recommending Officer:	Ellie Worth

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.

Neil Bearcroft

AUTHORISED OFFICER

Date: 17/11/2021

Officer report

Site description
394 Bradford Road, Fartown is a detached single storey building constructed from brick with a flat roof. The building appears to benefit from a commercial use and was last recorded as being a retail unit. However, the submitted details confirm that the building is now currently vacant. The site benefits from on-site parking to the West, whereby vehicular access can be taken from Bradford Road.

The site is situated within a mixed use area, with residential properties to the South and National windscreens to the North. The site is also unallocated on the Kirklees Local Plan.

Description of development
The proposal is seeking permission for the change of use from retail to café/takeaway.

The majority of the works related to the change of use, are to take place within the interior of the building, whereby the size and scale of the unit will not change.

Within the submitted application form, it states that the hours of operation are to include:

- 07:30 – 19:30 Monday – Sunday (including bank holidays)

History of negotiations/amendments received
Officers raised concerns with the agent regarding the provision of on site parking available. As such, additional information has been provided in order to overcome the concerns raised. The agent has also confirmed in writing that the building would not be extended as part of this proposal, nor would the existing car park be resurfaced. As such, the application has been determined on the information submitted.

Relevant Planning History
At the application site:
2013/90823 Partial front elevation refurbishment - Granted
2009/93036 Installation of replacement shop front - Granted
98/91217 Change of use of existing building from car showroom and ancillary spaces to A1 retail showroom and associated product assembly - Granted
97/90931 Change of use of part of existing building from car showroom and ancillary spaces to dry cleaners, external alterations and security shutters – Granted

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 4th August 2021 whereby one representation has been received.
A summary of the points raised are as follows:

- I welcome a positive use for the property in which is currently an eyesore
- A café development seems a good non-industrial proposal but is subject to the following concerns.
- The usage is likely to be much higher than the previous use, meaning more vehicles entering and existing the site. It is also likely to attract more spontaneous custom with vehicles slowing sharply to turn off the road at short notice.
- The site is on the downhill side of a busy dual carriageway which has a speed of 40 mph, this is compared to Merry England example, which is on a more straight, flat 30 mph road.
- This section of Bradford Road is subject to frequent speeding drivers.
- Therefore, the proposed use may result in an increased risk of driver conflicts.

Consultation Responses

- KC Crime Prevention: In support of the application in principle but request additional safety measures to be included.
- KC Environmental Health: No objections subject to conditions regarding the installation of an electrical charging vehicle point, contaminated land and details of the kitchen extract system being attached to the decision notice in the case of an approval.
- KC Highways DM: In objection to the scheme as the development proposes insufficient off street parking in which would lead to an intensification of the site, resulting in vehicles prejudicing the safe operation of the highway network.

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 unallocated on the Kirklees Local Plan.

Kirklees Local Plan (LP):

- LP1 – Achieving Sustainable Development
- LP2 – Place Shaping
- LP7 – Effective and efficient use of land and buildings
- LP13 – Town Centre Uses
- LP16 – Food and Drink Uses and the Evening Economy
- LP20 – Sustainable travel
- LP21 – Highways and access
- LP24 – Design

- LP30 – Biodiversity and Geodiversity
- LP51 – Protection and improvement of local air quality
- LP52 – Protection and improvement of environmental quality
- LP53 – Contaminated and unstable land

Supplementary Planning Documents
Draft Hot Food Takeaway

National Polices and Guidance:
National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) updated 20th 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. Most specifically in this instance, the below chapters are of most relevance:
- Chapter 8 – Promoting healthy and safe communities
- Chapter 12 – Achieving well-designed places
- Chapter 15 – Conserving and enhancing the natural environment

Assessment
The following matters are considered in the assessment below –
1.Principle of development
2.Impact on visual amenity
3.Impact on residential amenity
4.Impact on highway safety
5.Other matters
6.Representations
7.Conclusion

1.Principle of development
The site is without notation on the Kirklees Local Plan. Policy LP1 states that when considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework.

Policy LP1 goes on further to stating that: "The Council will always work proactively with applicants jointly to find solutions which mean that the proposal can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area''.

Policy LP24 of the KLP is also relevant and states that "good design should be at the core of all proposals in the district". Policy LP24 of the KLP is also relevant and states that "good design should be at the core of all proposals in the district".

Town Centre Uses

In this case, Policy LP13 is also relevant as the application is for the change of use from A1 retail to a café/takeaway (Class E/suis generis), which is considered to be a main town centre use. However, in this instance, it has been noted that the site is situated approximately 370m from the nearest local centre.

Nonetheless, officers have noted that the previous retail use is a main town centre use in which operated from the site. As such, given that the scheme is looking to swap the existing main town centre use for another, it is not necessary to request that the applicant undertakes a sequential test.

Food and drink uses
The proposed use would also constitute to a food and drink use. Hence, careful consideration must be given to the relevant criteria set out in Policy LP16 of the Kirklees Local Plan. On this occasion, the Council's Environmental Health Services and Designing out Crime Officer, respectively advise that impact of odour and the potential of antisocial behaviour are acceptable, subject to the recommended condition(s) detailed within their consultation responses below. However, the Highways Development Management Team have raised concern regarding the intensification of the site, due to the lack of on site parking spaces. For this reason, the development is considered to fail to accord with sub paragraph's d and e within Policy LP16 of the KLP.

2. Impact on visual amenity
Policy LP24 of the KLP states that good design should be at the core of all proposals. More specifically, proposals should incorporate good design by ensuring that the form, scale, layout and details of all development respects and enhances the character of the townscape and landscape. These aims are also reinforced within Chapter 12 of the NPPF (Achieving well designed plans) where paragraph 126 provides an overarching consideration of design stating that ''the creation of high quality buildings and places are fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities''.

In this instance, no external alterations are being proposed as part of this application and therefore the existing frontage will not be disturbed, subject to the removal of the existing signage. For these reasons, it has been considered that the proposal would not harm the visual amenity of the area and would bring a vacant building back into use. This is to accord with Policy LP24 of the KLP and Chapter 12 of the NPPF.

3. Impact on residential amenity
The proposed use has the potential to impact on the residential amenity and therefore application has been assessed by Environmental Health in relation to Policy LP52 of the Kirklees Local Plan.

No's 390, 390a and 392 Bradford Road are the neighbouring properties to the rear of the application site. In this instance, it has been considered that there

would be some impact upon these neighbours amenity, especially with regards to noise, odour and disturbance. As a result, KC Environmental Health have requested that a Kitchen Extract System and details of Pollution Prevention are attached as conditions to the decision notice in the case of approval. These would be prior to the use commencing to ensure that an acceptable level of amenity is retained.

The proposed hours of use are 07:30-19:30 Monday to Sunday. These have been assessed by Environmental Health Officers, whereby no concern has been raised, other than the hours of use for a Sunday. However, given the substantial concerns raised in terms of highway safety, officers have not entered into discussions regarding the appropriate hours of use. However, if the development was acceptable, this could be controlled via a condition.

Therefore, concluding on the above, officers are satisfied that the proposal subject to the above conditions, would preserve the amenity of neighbouring residents and would ensure a suitable standard of amenity in accordance with Policy LP24 of the Kirklees Local Plan and Chapter 12 of the NPPF.

4. Impact on highway safety

KC Highways DM have been formally consulted as part of this application. In this case, the building is situated on the East side of the A641 Bradford Road. The site compromises of a single storey building with a car parking area to the front which has at present 10 spaces. The proposed access is as existing with an In and Out arrangement from Bradford Road.

The design and access statement confirms that the proposal would be like the 'Merry England' café on New Hey Road, Huddersfield and therefore officers have requested that the applicant undertakes an assessment of the anticipated parking demand for the site. This could be based on a survey of the Merry England Café.

As such, the agent has provided details outlining that the Merry England café has an area of about 112 sq. m and a car park for 28 cars. This equates with Kirklees guidelines of 1 car space every 4 sq. m. In this case, the proposed café/takeaway has an area of 85 sq. m which on the same basis would require car parking spaces for 21 cars.

However, having reviewed the plans submitted the site only has parking at present for 10 spaces, with the applicant also enquiring regarding the possibility of obtaining additional land for the use of parking. Nonetheless, to date, this has been unsuccessful and therefore the agent has requested that the scheme is determined within its submitted form. Therefore given the limited amount of on site parking, there is a high potential that at busy periods cars would be displaced to park on street on to the adjacent classified A641 which is a major road into Huddersfield. On street parking also has the high likelihood of interfering with the points of access into and out of the site which serves the application site, but also adjacent industrial unit, reducing sightlines for these points of access.

Therefore, having taken into account the above Highways DM consider the proposal to provide insufficient information leading to concerns that the off-street parking proposed would be inadequate and that this proposal would be an intensification of use resulting in car parking prejudicial to the safe operation of the highway network. For these reasons, the application would not comply with the aims of Policies LP21 and LP22 of the Kirklees Local Plan and the Councils Highways Design Guide SPD.

5. Other matters

Bats

Paragraphs 174, 180, 181 and 182 of Chapter 15 of the National Planning Policy Framework are relevant, together with The Conservation of Habitats and Species Regulations 2017 which protect, by law, the habitat and animals of certain species including newts, bats and badgers.

In this case, the application site lies within the bat alert layer on the Council's GIS system, however no external alterations are proposed and therefore it is considered that the proposal would not adversely impact on bats. This would be in accordance with Policy LP30 of the Kirklees Local Plan and the aims of Chapter 15 of the NPPF.

Contaminated land

The site has been identified on the councils internal mapping system as being potentially contaminated due to its previous use as a garage/filling station. However, the agent has confirmed that no external works would be undertaken, nor would the existing hard surface be re-laid. As such, it is not considered necessary to attach full land contamination conditions, in the case of an approval. This is to accord with Policy LP53 of the KLP and Chapter 15 of the NPPF

Climate change

On 12th November 2019, the Council adopted a target for achieving 'net zero' carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan predates the declaration of a climate emergency and the net zero carbon target however, it includes a series of policies which are used to assess the suitability of planning applications in the context of climate change. When determining planning application's, the Council will use the relevant Local Plan policies and guidance documents to embed the climate change agenda.

In this case, due to the nature of the proposal is not considered reasonable to require the applicant to put forward any specific resilience measures, as the application is permission for a change of use. However, in the case of an approval, a condition would be attached to the decision notice requiring the provision of an electric vehicle charging point. This would provide the future opportunity for low carbon vehicles.

6. Representations

As a result of the above publicity, one representation has been received. A summary of the points raised, along with officer correspondence are as follows:

- I welcome a positive use for the property in which is currently an eyesore
- A café development seems a good non-industrial proposal but is subject to the following concerns.
- The usage is likely to be much higher than the previous use, meaning more vehicles entering and existing the site. It is also likely to attract more spontaneous custom with vehicles slowing sharply to turn off the road at short notice.
- The site is on the downhill side of a busy dual carriageway which has a speed of 40 mph, this is compared to Merry England example, which is on a more straight, flat 30 mph road.
- This section of Bradford Road is subject to frequent speeding drivers.
- Therefore, the proposed use may result in an increased risk of driver conflicts.
  Comment: The above concerns have been noted and reiterate those raised by KC Highways DM.

7. 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.

This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development proposals do not accord with the development plan and that specific policies in the NPPF provide a clear reason for refusing the development proposed.

Recommendation Refuse

Decision Authorisation - Delegated Powers
Application Number: 2021/92539
Officer Recommendation: Refuse

Reason for refusal:

1. The proposed change of use from retail to café/takeaway at 394 Bradford Road, by reason of the limited availability of off street parking would result in a significant undersubscription for the proposed use, which has the potential to lead to vehicles parking on the adjacent classified A641, on street parking along the A641 adjacent the application site would also significantly reduce sightlines into and out of the application site. The proposal would therefore be detrimental to the safe operation of the highway network. For these reasons, the application fails to comply with the aims of Policies LP16 (d & e), LP21 and LP22 of the Kirklees Local Plan, the Highways Design Guide SPD and the aims of the National Planning Policy Framework.

Plans and specifications schedule: -

Plan Type	Reference	Version	Date Received
Location plan, floor plan and elevations	2124-01	-	23rd June 2021
Design and access statement	-	-	23rd June 2021
Parking survey	-	-	23rd August 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 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. In this instance, officers raised concerns with the agent regarding the provision of on-site parking available. As such, additional information has been provided in order to overcome the concerns raised. The agent has also confirmed in writing that the building would not be extended as part of this proposal, nor would the existing car park be resurfaced. As such, the application has been determined on the information submitted.

Dated: 17th November 2021