

**KIRKLEES METROPOLITAN COUNCIL
DEVELOPMENT & MASTER PLANNING SERVICE**

DEVELOPMENT MANAGEMENT

**Town and Country Planning (General Permitted Development) (England)
Order 2015(as amended) - Schedule 2, Part 3, Class MA**

**DELEGATED DECISION FOR PRIOR APPROVAL FOR CHANGE OF USE
FROM COMMERCIAL, BUSINESS AND SERVICE USES TO
DWELLINGHOUSES**

Reference no. 2021/CL/94422/E

Site Address	67, Daisy Hill, Dewsbury, WF13 1LT
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Description	Prior notification for change of use from commercial, business and service (class E) to three dwellings (class C3) (within a Conservation Area)
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Recommending Officer	Callum Harrison
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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:24-Jan-2022

Officer Report

2021/94422 - 67, Daisy Hill, Dewsbury, WF13 1LT

Prior notification for change of use from commercial, business and service (class E) to three dwellings (class C3) (within a Conservation Area)

Site Description

The application relates to a three storey, terraced property located within the allocated Dewsbury Town Centre. The property also benefits from basement and attic levels. The property is faced in stone and has a typical shop frontage window with door at the ground floor level to the front due to the established commercial/services use of the premises. The site is set within the Dewsbury Town Centre Conservation Area whereby the surrounding uses are primarily commercial.

Description of Proposal

The proposal seeks to confirm that the change of use from commercial, business and service (class E) to three dwellings (class C3) (within a Conservation Area) use is permitted development under Class MA of the General Permitted Development Order (2015) (as amended). The three flats would be set across and occupy all five levels, from the basement to the attic floors. The accommodation would consist of one two-bedroom flat, and two one-bedroom flats. The shop frontage would be removed and replaced with window to match the existing windows on the first and second floor.

History of Negotiations

As this application is for prior notification, the time constraints are consuming meaning there is little scope for negotiations. To even attempt to overcome the issues would require significantly more information to be submitted whereby it would be unlikely this can be supplied and then assessed in time, notwithstanding the fact officers consider the issues may be not able to be resolved. For this reason, no amendments or additional information was sought.

Relevant Planning History

None.

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 MA (As inserted 2021) permits the following development:

‘MA. Development consisting of a change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order.’

The proposal (other than the alterations) is considered to be covered within this Class, and is thus authorised subject to the restrictions, conditions and prior notification procedure outlined in Paragraphs MA.1, MA.2 and MA.3
Development is not permitted by Class MA if:-

(a) unless the building has been vacant for a continuous period of at least 3 months immediately prior to the date of the application for prior approval;	Pass: The applicant has declared on the application form that the building has been vacant for a continuous period of at least 3 months immediately prior to the date of this application.
(b) unless the use of the building fell within one or more of the classes specified in sub-paragraph (2) for a continuous period of at least 2 years prior to the date of the application for prior approval;	Pass: The applicant has declared on the application form that the use of the building fell within one or more of the classes specified in sub-paragraph (2) for a continuous period of at least 2 years prior to the date of this application.
(c) if the cumulative floor space of the existing building changing use under Class MA exceeds 1,500 square metres;	Pass: The cumulative floor space does not exceed 1,500 square metres.
(d) if land covered by, or within the curtilage of, the building— (i) is or forms part of a site of special scientific interest; (ii) is or forms part of a listed building or land within its curtilage; (iii) is or forms part of a scheduled monument or land within its curtilage; (iv) is or forms part of a safety hazard area; or (v) is or forms part of a military explosives storage area;	Pass: The land covered by, or within the curtilage of, the building does not all within any of the categories labelled from i to v.
(e) if the building is within— (i) an area of outstanding natural beauty;	Pass: The building is not within any of the places/allocations set out under point i to v.

(ii) an area specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981; (iii) the Broads; (iv) a National Park; or (v) a World Heritage Site;	
f) if the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained; or	Pass: the site is not occupied under an agricultural tenancy.
(g) before 1 August 2022, if— (i) the proposed development is of a description falling within Class O of this Part as that Class had effect immediately before 1st August 2021; and (ii) the development would not have been permitted under Class O immediately before 1st August 2021 by virtue of the operation of a direction under article 4(1) of this Order which has not since been cancelled in accordance with the provisions of Schedule 3.	Pass: The proposed development is not of a description that would fall under Class O

Paragraph MA.2 outlines a set of three conditions that the developer must adhere to. MA.2(2) states:

‘(2) Before beginning development under Class MA, 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 impacts of the development, particularly to ensure safe site access;

(b) contamination risks in relation to the building;

- (c) flooding risks in relation to the building;
- (d) impacts of noise from commercial premises on the intended occupiers of the development;
- (e) where—
 - (i) the building is located in a conservation area, and
 - (ii) the development involves a change of use of the whole or part of the ground floor, the impact of that change of use on the character or sustainability of the conservation area;
- (f) the provision of adequate natural light in all habitable rooms of the dwellinghouses;
- (g) the impact on intended occupiers of the development of the introduction of residential use in an area the authority considers to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses; [F2](#)...
- (h) where the development involves the loss of services provided by—
 - (i) a registered nursery, or
 - (ii) a health centre maintained under section 2 or 3 of the National Health Service Act 2006, the impact on the local provision of the type of services lost [F3](#); and
- (i) where the development meets the fire risk condition, the fire safety impacts on the intended occupants of the building'

Paragraph MA.3 stipulates the need for the developer to comply with paragraph MA.2(2)(i) which ensures developments meet the fire risk condition, the fire safety impacts on the intended occupants of the building .

ASSESSMENT

As per Part 3, Class MA, paragraph MA.2(2), the local planning authority must assess the impact on several matters. It should be noted here that the applicant/agent has only submit the existing and proposed floor plans and elevations alongside the location plan and application form.

With regard to '(a) transport impacts of the development, particularly to ensure safe site access;' no transport information has been submitted whatsoever. The proposed development would not be served by any off street parking. However, given the town centre location, there is parking available in public car parks relatively close by. Officers therefore deem that the proposal would be unlikely to harm the highway network in terms of safety. Given the access

would be off the pavement, the site access would be safe also. For this reason, the development is, on balance, acceptable with regards to MA.2(2)(a).

MA.2(2)(b) and (c) are not of concern given the site is set in flood zone two and does not involve any excavation works.

MA.2(2)(d) requires the LPA to assess impacts of noise from commercial premises on the intended occupiers of the development. Officers cannot make any genuine attempt to accurately assess this impact due to insufficient information being submitted. No noise related information has been submitted whatsoever. The site is set within the allocated town centre, thus there are several noise generating uses close by. It is therefore likely noise mitigation measures would be required to protect the amenity of future occupants of the proposed development. Therefore, given the lack of noise information, the proposal is clearly contrary to Local Plan policy LP24b and Chapter 12 of the NPPF as it does not suitably demonstrate the amenity of future occupiers won't be harmed through noise. The application will therefore be refused on this reason.

MA.2(2)(e) requires the LPA to consider the heritage impacts of the development 'where (i) the building is located in a conservation area, and (ii) the development involves a change of use of the whole or part of the ground floor, the impact of that change of use on the character or sustainability of the conservation area.' Alike the point made in the above paragraph, no heritage information has been submitted. The application site is set within the Dewsbury Town Centre Conservation Area. The proposal also involves a change of use of the whole of the ground floor and works to the front elevation to remove the shop frontage. Planning permission would in itself be required for the alterations to the ground floor outwith of this application which has not been sought. Officers deem that the works are likely to harm the character of the conservation area. Local Plan Policy LP35 states 'Consideration should be given to the need to: ...3b. ensure that proposals within Conservation Areas conserve those elements which contribute to their significance;'. The application has failed to give any consideration to the impact on the Conservation Area given the omission of any heritage information whatsoever, let alone a Heritage Impact Assessment which is required in this instance. Notwithstanding this, the proposed removal of the shop front, rebuilding with material which is unlikely to match existing (whereby the material has not been specified anyhow) and general design of the development cannot be considered to positively contribute to the conservation area setting. In fact officers deem the proposed development would cause harm. The lack of information means the proposal is directly contrary to paragraphs 201 and 202 of the NPPF whereby it states the applicant must demonstrate public benefit to outweigh the harm. Given the insufficient information and poor design, the proposal does not accord with relevant national and local policy with regard to heritage and thus will be refused on this matter also.

MA.2(2)(f) requires the provision of adequate natural light in all habitable rooms of the dwellinghouses. The proposal sees a bedroom set on the basement level and would be served by a lightwell. No details of the lightwell have been submitted other than its outline shown on the floor plans which are most likely to require planning permission in their own right. Again, due to limited information regarding the lightwell and absence of planning permission, officers cannot be confident that the lightwell will provide adequate natural lighting to the bedroom in the basement. Moreover, the rear room annotated as “snug” on the proposed plan does not benefit from any natural light. Given the definition of habitable room in paragraph X of Part 3, such living space would also be considered to be a habitable room. Finally, the proposed plans indicate rooflights will provide natural light to the living spaces in the attic. As no planning permission exists for these alterations to insert rooflights and no natural light is provided elsewhere, the attic rooms would also not benefit from any natural light. Thus, the proposal is contrary to Local Plan policy LP24b and Chapter 12 of the NPPF the scheme does ensure a good standard of amenity for future occupiers. Procedures as provided in Class W of part 3, paragraph (2(2A)) states that the Local Planning Authority must refuse prior approval if adequate natural light is not provided in all the habitable rooms.

MA.2(2)(g) is not considered applicable as the authority do not consider the surrounding area to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses.

The proposal does not result in the loss of a nursery or health care centre, thus, the proposal accords with MA.2(2)(h).

MA.2(2)(i) states that where the development meets the fire risk condition, the fire safety impacts on the intended occupants of the building. The development is for over two dwellings although does not exceed the height of the building as set out in article 9A of the General Management Procedure Order 2015.

CONCLUSION

The criteria of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) Schedule 2, Part 3, Class MA.2(2) has been assessed and prior approval is refused by reason concerns regarding noise impacts on future occupiers, harm to the conservation area and the lack of adequate natural light in basement and attic rooms. The proposal does not, therefore benefit from a general planning permission under Article 3(1) of the same Order.

RECOMMENDATION:

REFUSE PRIOR APPROVAL

Decision Authorisation - Delegated Powers

Application Number: 2021/94422

Officer Recommendation: Refuse Prior Approval

Reasons for Refusal

In this instance the Local Authority have significant concerns regarding noise impacts on future occupiers, harm to the conservation area, lack of adequate natural light to basement and attic rooms. Without detailed information to demonstrate these risks can be mitigated prior approval is refused for the following reasons:-

1. Given the insufficient information provided in regard to noise impacts on future occupants from noise generating uses close by in the town centre, the potential noise impact on the residential amenity site of future occupants cannot be suitably assessed. The submission of a Noise Impact Assessment is required to demonstrate noise would not harm the amenity of future occupants. Officers consider that the setting of the site in the allocated town centre, whereby commercial uses are dominant, would likely lead to unacceptable levels of noise harming the residential amenity of future occupants of the development if no noise mitigation measures were put in place. Given the submission of insufficient information the proposal is thus deemed contrary to policy LP24 of the Kirklees Local Plan and Chapter 12 of the National Planning Policy Framework.
2. The application site is set within the Dewsbury Town Centre Conservation Area. Officers deem that the proposal, would lead to harm on the Conservation Area whilst no public benefits have been submitted, contrary to local Plan policy LP35. The lack of information and lack of any planning permission for the alterations means the proposal is directly contrary to paragraphs 201 and 202 of the NPPF whereby it states the applicant must demonstrate public benefit to outweigh the harm. Notwithstanding this, the design of the new frontage is poor with little details regarding materials submitted. The proposal does not accord with relevant national and local policy with regard to heritage and thus will be refused on this matter also. The proposal would therefore be contrary to policy LP35 of the Kirklees Local Plan and Chapter 16 of the National Planning Policy Framework.
3. The bedroom and snug within the basement of the proposed development shown to be served by the formation of a lightwell and attic study rooms shown to be served by rooflights are only proposed to be provided with natural light by alterations which do not benefit from any existing planning permission being granted. As there is no guarantee natural light can be provided into these rooms it means the Local Planning Authority cannot be satisfied the bedroom and snug in the basement and attic study rooms would be served by adequate natural light. Information regarding the depth, the cover to the well and sections of the lightwell would all be required to determine whether the bedroom and snug could be provided with adequate natural light.. This would harm the amenity of future occupiers. The proposal is therefore deemed contrary to policy LP24 of the Kirklees Local Plan and

Chapter 12 of the National Planning Policy Framework with regard to residential amenity and therefore not according with paragraph 2(2A) of the Town and Country Planning(General Permitted Development)(England) Order 2015 Schedule 2 Part 3 Class W (as amended).

Plans and Specifications Table:-

Plan Type	Reference	Version	Date Received
Location Plan	No ref (titled: location, site plan)	1	30/11/2021
Grouped Plans and Elevations	No ref (titled: Proposed Floor Plans and Elevations)	1	30/11/2021
Grouped Plans and Elevations	No ref (titled: Existing Floor Plans)	1	30/11/2021

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. As this application is for prior notification, the time constraints are consuming meaning there is little scope for negotiations. To even attempt to overcome the issues would require significantly more information to be submitted whereby it would be unlikely this can be supplied and then assessed in time, notwithstanding the fact officers consider the issues may be not able to be resolved. For this reason, no amendments or additional information was sought.