

**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. 2022/CL/93522/W

Site Address	first floor, 27, Market Street, Milnsbridge, Huddersfield, HD3 4ND
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Description	Prior notification for change of use from Commercial, Business and Service (Use Class E) to one dwellinghouse (Use Class C3) (within a Conservation Area)
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Recommending Officer	Laura Yeadon
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DECISION – PRIOR APPROVAL 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:21-Dec-2022

Officer Report

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2022%2f93522>

Site Description

27 Market Place, Milnsbridge is a two storey property which is located within the Milnsbridge Conservation Area, the Milnsbridge District Centre and within Flood Zone 2. The property is comprised of 3 no. commercial retail units at ground floor level within a terraced row. Surrounding the property are buildings which are both residential and commercial.

Prior approval is sought for the proposed change of use of the building from commercial, business and service (Use Class E) to one dwellinghouse (Use Class C3). The submitted application form states that the works would result in the formation of one dwelling, however it is noted that there are 6 no. individual bedrooms provided along with 1 no. small kitchen and 1 no. bathroom. No other communal spaces are proposed. The submitted plans indicate that all bedrooms have a window opening. No external works are proposed.

1. Procedural Matters

Prior notifications for the change of use of premises from Class E (commercial, business & service) to a use falling within Class C3 (dwellinghouses) are considered against the requirements as set out by the Town and Country Planning (General Permitted Development) Order 2015 (Amended) Schedule 2, Part 3, Class MA, condition 2:

Limitations for Part 3, Class MA.1 Development

Development is not permitted:-

(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: There is no evidence to suggest the building has been occupied 3 months prior to the date of the 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 use of the premises is and has been solicitors for at least a 2 year period.
(c) The cumulative floor space of the existing building changing use under Class MA exceeds 1500 square metres;	Pass: The cumulative floor space of the existing building change use under Class MA would not exceed 1500 sq m.
(d) if land covered by, or within the curtilage of, the building— (i) is or forms part of a site of special	Pass: The development is not in any category in paragraph (d)

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;	
(e) if the building is within— (i)an area of outstanding natural beauty; (ii)an area specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981(3); (iii)the Broads; (iv)a National Park; or (v)a World Heritage Site;	Pass: The building is not in any category in paragraph (e)
(f) if the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained;	Pass: The building is not occupied under any 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 building is not within and land affected by an Article 4 Direction.

Condition MA.2:

In this instance 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:

- Transport and highway impacts
- Contamination risks
- Flooding risks
- Impact in terms of noise for the future occupants from commercial premises

- the provision of adequate natural light in all habitable rooms of the dwellinghouses
- 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

The development does not result in the loss of a health centre or registered nursery.

The development does not meet the fire risk condition.

The above details will be assessed below.

As part of the notification procedure, the Local Authority notified members of the public of the proposed development by sending neighbour notification letters to those with an adjoining boundary and allowing 21 days for objections to be made. The Local Planning Authority shall consider any representations made as a result of the notice given.

Space Standards

Article 3(9A) of the Town and Country Planning (General Permitted Development)(England) Order (as amended) precludes any grant of planning permission where the gross floor area of any new dwelling does not exceed 37 square metres or does not meet nationally described space standard issued by the Department for Communities and Local Government on 27th March 2015. The requirement to meet national space standards was introduced to prior approval applications on 6th April 2021.

In this instance, the accommodation proposed would be over one storey and would be a 6 no. bedroom property with a shared kitchen and bathroom. The Technical Housing Standards document states that a single storey property with 6 no. bedrooms should be a minimum of 116 square metres based on 7 bedspaces and 125 square metres based upon 8 people sharing the property. In this instance while the internal layout indicates the size of each room the Gross Floor Area as defined by the Technical Space Standard is unclear as the scale is incorrect. The Gross Floor Area is the internal floor as when measured from the perimeter walls of the dwelling. In this case the red line boundary shown on the location plan appears to be consistent with the Council's mapping system and while of a large scale the maximum area the dwellinghouse could be is 120 sq metres externally. As the floor plans indicate 11 bedspaces the minimum space is 125 sq metres.

In addition, the technical requirements state that in order to provide 1 bedspace would require a floor area of at least 7.5 square metres a double or twin bedroom for 2 bedspaces would require a floor area of at least 11.5 square metres. The submitted information indicates that 1 no. single bedroom would be created which would meet the standards (bedroom 3) and 5 no.

double bedrooms are proposed of which 3 of the bedrooms (bedrooms 1, 4 and 5) which would fail to meet the required.

Therefore, in total, the building falls short of the recommended space standard and therefore cannot benefit from prior approval.

Publicity end date: 8th December 2022.

Objections

As a result of the above publicity, no responses have been received.

Assessment

Transport and highway impacts:

Highways Development Management were formally consulted as part of the application and whilst there is no objection to the proposal based on the sustainable location, the content of the information provided is insufficient. This is due to no details regarding the proposal for the storage and collection of waste being submitted with the application. In addition, the Councils Waste Strategy Team have also provided comments and state that the proposed ground plans demonstrate the layout of the building however there are no details regarding external waste storage and the storage of the bins on Market Street would not be acceptable and wheelie bins should be started that the rear of the property with the bins taken to the collection point on collection day. Further information can be found online with the consultation response.

Contamination risks:

None

Flooding risk:

The site is located within Flood Zone 2. A Flood Risk Assessment has been completed which identifies that the facility would be residential (C3) which is classified as being less vulnerable in terms of the impact of flood risk. The Assessment cites that all floor levels would remain as current with no change to drainage or levels and concludes that there would be no change to the level of risk of flooding than is already considered in the current use of the building.

Notwithstanding the FRA, paragraph 168 of NPPF states that while sequential and exceptions tests are not required the application should still meet the requirements for site-specific flood risk assessments set out in footnote 55 of NPPF. Footnote 55 sets out that a site -specific flood risk assessment should be carried out where development introduces a more vulnerable use. Annex 3 of the NPPF defines more vulnerable uses to include dwelling houses where as less vulnerable includes professional services which in this case would be the former solicitors office.

The FRA submitted classes the residential use as less vulnerable which is contrary to NPPF guidance. The mitigation measure proposed also appear identical measures proposed for the change of use to hot food take-away. It is therefore considered the FRA does not properly consider the impact of flooding on the property.

Impact in terms of noise:

As part of the application process and the potential for harm from noise, the Environmental Health Team were formally consulted with regard to the proposal. Concerns have been raised that noise from commercial premises and possibly road traffic will detrimentally impact on the amenity of future occupiers. The comments state that proposed residential units have large windows opening out on busy town centre streets and rear service yards. Noise sources include but are not limited to multiple commercial premises, road traffic, customers and delivery vehicles and the wall mounted plant to the rear of the premises.

As such, Environmental Health Officers have requested that a noise report to assess the impact that existing commercial noise sources and traffic will have on the future occupiers of the proposed development. This can be secured by way of condition, should the application be recommended for approval.

In addition, it is also noted that the proposed residential units on the first floor share a party floor/wall commercial premises and therefore a condition would be required to protect the amenity of future occupiers. Information would be required by the developer to demonstrate that the airborne sound insulation performance of the party floor/wall of the development is a minimum of 55dB Dntw + Ctr. In the instance that this cannot be demonstrated, a scheme with further measures should be submitted.

The provision of adequate natural light in all habitable rooms of the dwellinghouse

In terms of natural light, the property hosts openings within the front and rear elevation and it is indicated on plan that each bedroom and the kitchen and bathroom host one window per room. This would provide natural light into the property to a reasonable standard.

Impact upon general or heavy industry, waste management, storage and distribution, or a mix of such uses

The impact of waste management has been assessed above within the highways section of this report.

Other matters

None

Representations

None received

Recommendation

The application has not been submitted with sufficient information to allow the Local Authority to assess the flooding impacts. Article 3(9A) of the GDPO states that Schedule 2 does not apply if the proposal does not comply with the space standards and therefore the application is to be refused.

Recommendation: Prior Approval Refused

Decision Authorisation - Delegated Powers

Application Number: 2022/93522

Officer Recommendation:

Article 3(9A) of the Town and Country Planning (General Permitted Development)(England) Order (as amended) precludes any grant of planning permission where the gross floor area of any new dwelling does not meet nationally described space standard issued by the Department for Communities and Local Government on 27th March 2015. The requirement to meet national space standards was introduced to prior approval applications on 6th April 2021.

It is considered the internal gross floor space of the dwellinghouse does not meet the space standards for the 11 bed spaces proposed.

The submitted information also indicates that 1 no. single bedroom would be created which would meet the standards (bedroom 3) and 5 no. double bedrooms are proposed of which 3 of the bedrooms (bedrooms 1, 4 and 5) which would fail to meet the required space standards.

It is also considered the Flood Risk Assessment fails to adequately address the potential impact of flooding in Flood Risk Zone 2.

As such, the proposal would fail to comply with requirements as set out by the Town and Country Planning (General Permitted Development) Order 2015 (Amended) Schedule 2, Part 3, Class MA by not meeting the required space standards.

Plans and specifications schedule: -

Plan Type	Reference	Web ID	Date Received
Location plan	103		27 th October 2022
Ground floor plan			27 th October 2022
Location plan and ground floor plan	101		27 th October 2022
Proposed first floor plan	102		27 th October 2022

Plan Type	Reference	Web ID	Date Received
Flood Risk Assessment			27 th October 2022

Report Dated:

9th December 2022