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/93899/W**
Site Address	**50, Market Street, Milnsbridge, Huddersfield, HD3 4HT**
Description	**Prior notification for change of use from ground floor commercial space into two apartments (within a Conservation Area)**
Recommending Officer	**Lucy Taylor**

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-2023

Officer Report

Site Description

The application relates to the ground floor of 50 Market Street, Milnsbridge, Huddersfield. 50 Market Street is single storey and sited in the corner plot of a row of terrace buildings. The building is faced in stone with a tiled gable roof. The building is located within the Milnsbridge District Centre.

At present, 50 Market Street is vacant but is Allocated in the Kirklees Local Plan with a primary classification as commerical, a secondary classification as retail and a tertiary classification as shop/showroom.

The building which adjoins 50 Market Street to the north functions commercially, as a fast-food take-away (No. 52 Market Street). The building adjoining to the east functions as a residential unit (No. 90 George Street).

With regards to heritage significance, the site is located within the Milnsbridge Conservation Area.

Description of Proposal

The proposal seeks to confirm that the change of use of 50 Market Street to two apartments is permitted development under Class MA of the General Permitted Development Order (2015) (as amended).

The ground floor of 50 Market Street would be converted into two apartments.

Apartment 1 will have one bedroom, with a kitchen/living/dining area and a bathroom.

Apartment 2 will have two bedrooms, with a kitchen/living/dining area and a bathroom.

There would be no alterations to existing openings.

Relevant Planning History

- **2018/94209** – Change of use of bank to form 2 retail units and formation of new entrance. *Granted Conditional Full Permission.*

- **2021/91662** - Change of use and alterations to derelict chip shop to form one dwelling and refurbishment of existing first floor flat. *Granted Conditional Full Permission.*

Representations

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.
In addition, given the location of the site within the Milnsbridge Conservation Area, the proposed development was also advised via the erection of a site notice and within the newspaper.

The Local Planning Authority shall consider any representations made as a result of the notice given.

Publicity end date: 6th January 2022.

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

1. Procedural Matters

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 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.

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 a bank for at least a 2-year period – classified as a financial and professional service under class A2.
(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 changing use under Class MA would not exceed 1500sqm.
(d) if land covered by, or within the curtilage of, the building— (i)is or	**Pass:** The development is not in any category in paragraph (d).

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;	
(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 provision of Schedule 3.	**Pass:** The building is not within any land affected by an Article 4 Direction.

Condition MA.2:

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

(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 considered to be important for general or heavy industry, waste management, storage and distribution, or a mix of such uses;…

(h) where the development involves the loss of services provided by –
(i) a registered nursery, or
(iii) 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; 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.

The above details will be assessed below.

Assessment

As per Part 3, Class MA, paragraph MA.2(2), the local planning authority must assess the impact on several matters.

Transport and Highway Impacts:

The Kirklees Council Highways Development Management Team were informally consulted and had the following comments.

The application is for prior notification to turn a commerical premises into two residential dwellings (a 1 bed and a 2-bed apartment) at an existing building that fronts on to the B6111 Market Street, a 30mph two-way single carriageway town centre link road of approximately 9m width with footways on both sides and street lighting present. There are 'No Waiting at Any Time' TRO markings on all the streets in the vicinity, with some resident permit or limited waiting (45 mins) bays to the east of the site on George Street, although it should be noted that the residential dwellings may not be eligible

for a parking permit. The site is situated on a signalised crossroads in the commercial centre of Milnsbridge, there is a bus stop on a high frequency route approximately 45 mins from the proposal site and there are numerous shops and services within a very short walk of the site. This would place the site in a very sustainable location.

No parking is proposed for the application, and this would be acceptable on balance given the type and size of the proposals and the very sustainable town centre location of the site.

No details were provided relating to the storage and collection of waste at the premises. It is considered that there is space in the shared yard area for the storage of bins off the highway. Highways Development Management would not wish to see bins left on the footway as this would cause an obstruction and thus a possible highway safety concern.

For the reasons set out above, Highways Development Management consider the application to be acceptable, however, if permission were to be granted, it would be necessary to include a condition regarding bin storage and presentation points, stating that wheelie bins should be located to the rear of the property with bins taken to an appropriate collection point on collection day.

Contaminations Risks:

MA.2(2)(b) requires the LPA to assess the risks of contamination in relation to the building. However, in this instance, MA.2(2)(b) is not of concern given that the site is not located close to any sources of contamination.

Flooding Risk:

The site is located in Environment Agency Flood Zone 2, defined as land which has between a 1% and 0.1% annual probability of fluvial flooding or between a 0.5% and 0.1% annual probability of tidal flooding in any year. Paragraph 168 of NNPPF excludes the requirement for a sequential and exceptions test for applications for changes of use although a site specific flood risk assessment is required.

It is considered that flood risk is not a factor that would indicate refusal in this instance but that there is a material risk to future occupants of the ground floor flats.
The flood risk assessment report submitted as part of this application includes details of evacuation plans and resilience measures. This report sets out the proposed evacuation plan for occupants of the dwelling, including maps, floor plan evacuation drawings and encouragement to register for the Environment Agency's Flood Line warning. The evacuation plan and resilience measures included within the flood risk report are considered acceptable (previously granted approval under a previous application referenced 2021/94379).

Therefore, if permission were to be granted under this application, two conditions would be imposed, one to ensure that the approved measures would be implemented before the flats are first brought into use and one to ensure that future residents would be provided with a copy of the flood evacuation plan with a requirement to sign up for the Environment Agency's flood warning service.

Impact in Terms of Noise:

MA.2(2)(d) requires the LPA to assess impacts of noise from commercial premises on the intended occupiers of the development.

Concerns have been raised that noise from commerical premises and possible road traffic could detrimentally impact on the amenity of future occupiers. The proposed residentials units would have large windows, which would open out onto busy town centre streets and a rear service yard. Therefore, noise sources include but are not limited to multiple commerical premises, road traffic, customers, delivery vehicles and wall mounted equipment in conjunction with the neighbouring fast-food takeaway.

As such, if permission were to be granted, a pre-commencement condition would be imposed regarding the submission of a noise assessment report. This report would need to assess the impacts of noise on the future occupiers of the proposed development.

In addition, it is also noted that one of the flats would share a party floor/wall with a fast-food takeaway and therefore a condition would be required upon the grant of permission to protect the amenity of future occupiers. Information would be required by the developer to demonstrate that the airborne sound insulation performance of the part floor/wall of the development is a minimum of 55fB Dntw + Ctr. In the instance that this cannot be demonstrated, a scheme with further measures should be submitted.

Impact to Conservation Area:

The proposal is for the change of use of an existing building, no with external alterations proposed as part of the development scheme. As such, the only impact to the character of the Milnsbridge Conservation Area that could arise would be from bin storage.

For this reason, upon any grant of permission, a condition would be required to be imposed regarding the storage of waste to the rear of the building, within the existing service yard. This would be to ensure that bins are not left on the fronting pavement, which would result in detriment to the visual amenity and character of the Milnsbridge Conservation Area.

Provision of Adequate Light in all Habitable Rooms of the Dwellinghouse:

MA.2(2)(f) requires the provision of adequate natural light in all habitable rooms of the dwellinghouses. Class X of Part 3 defines habitable windows as

those *"used or intended to be used for sleeping or living which are not solely used for cooking purposes, but does not include bath or toilet facilities, service rooms, corridors, laundry rooms, hallways or utility rooms".*

Windows of a reasonable size would serve the dominant habitable rooms including the kitchen/living/dining rooms and the bedrooms.

Therefore, the proposal is considered acceptable with regards to MA.2(2)(f).

Impact Upon General or Heavy Industry, Waste Management, Storage and Distribution, or a Mix of Such Uses:

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.

Loss of Services Provided by a Registered Nursery of Health Clinic:

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

Fire Risk Condition:

The development does not meet the fire risk condition.

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 sq metres or does not meet nationally described space standard issued by the Department for Communities and Local Government on 27th March 2015.

In this instance, the accommodation proposed would be over one storey and would comprise of a one-bedroom flat and a two-bedroom flat. The floor plans submitted show that the one-bedroom flat would have a floorspace of 53spm and that the two-bedroom flat would have a floorspace of 58sqm. It should also be noted that the floor plans show all of the bedrooms within both flats to have provisions for king sized beds, meaning occupation could be at the maximum of 2 person for the one-bedroom flat and 4 person for the two-bedroom flat.

The Technical Space Standards set out that, as a minimum, single storey one-bedroom dwellings should provide a floorspace of 50sqm for 2-person occupation. Therefore, the one-bedroom flat is considered to appropriately comply with recommended space standards.

The Technical Space Standards set out that, as a minimum, single storey two-bedroom dwellings should provide a floorspace 70sqm for 4-person

occupation. Therefore, the two-bedroom flat falls short of the recommended space standard and therefore, cannot benefit from prior approval.

Other Matters:

None.

Representations:

None received.

Recommendation

The application has not been submitted with sufficient information to allow the Local Authority to assess the noise impacts.

It is considered that the internal gross floor space of the two-bedroom flat would not meet the space standards for the four bed spaces proposed.

Recommendation: Prior Approval Refused

Delegated Authorisation – Delegated Powers
Application Number: 2022/93899
Officer Recommendation: Prior Approval Refused

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 that the internal gross floor space of the two-bedroom flat would not meet the space standards for the 4 bed spaces proposed.

It is also considered that the application has not been submitted with sufficient information to allow the Local Planning Authority to assess the noise impacts.

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	Version	Date Received
Proposed Elevations	P300	-	1.12.22
Proposed Floor Plans	P100	-	1.12.22
Proposed Site/Block Layout	P01	-	1.12.22
Flood Risk Assessment	-	-	1.12.22

Report Dated: 24.1.23