

**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. 2023/CL/91469/W**

**Site Address 2, 4 & 6, Thornton Lodge Road,  
Thornton Lodge, Huddersfield,  
HD1 3JQ**

**Description Prior notification for change of use  
from shop/restaurant to 3  
dwellings**

**Recommending Officer Laura Yeadon**

**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:07-Jul-2023**

## **Officer Report**

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2023%2F91469>

### **Site Description**

2, 4 & 6 Thornton Lodge Road are two storey buildings which were former dwellings which more recently have been used as a restaurant with residential flat at first floor which spans over No's 2 and 4. The unit is currently vacant. The building is terraced and has a stone frontage. Parking spaces are marked out to the front of the building with double yellow lines immediately beyond the parking area. No. 6 was used for office purposes at ground floor and residential at first floor.

Prior approval is sought for the proposed change of use of the building from commercial business and service (Class E) to three dwellings (Class C3). The submitted details indicate the following:

No. 2 – 1 bedroomed ground floor flat

No. 4 – 2 bedroomed ground floor flat

No. 6 – 2 bedroomed flat over two floors

The proposed street scene elevation indicates that there would be alterations to the frontage of the building in terms of altering the existing fenestration details and the installation of roof lights to the rear single storey projection. These alterations would not be granted consent under this Class MA application and would require separate planning permission. Consequently the application must be assessed upon the building in its current exterior appearance.

### **1. Procedural Matters**

Prior notifications for the change of use of premises from Class E (commercial, business and 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)(England) Order 2015 (as 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	<b>Pass:</b> 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	<b>Pass:</b> The use of the premises is

<p>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;</p>	<p>and has been commercial for at least a 2 year period based upon the information submitted by the Agent</p>
<p>(c) The cumulative floor space of the existing building changing use under Class MA exceeds 1500 square metres;</p>	<p><b>Pass:</b> The cumulative floor space of the existing building changing use under Class MA would not exceed 1500 sq m</p>
<p>(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;</p>	<p><b>Pass:</b> The development is not in any category in paragraph (d)</p>
<p>(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;</p>	<p><b>Pass:</b> The building is not in any category in paragraph (e)</p>
<p>(f) if the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained;</p>	<p><b>Pass:</b> The building is not occupied under any agricultural tenancy</p>
<p>(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.</p>	<p><b>Pass:</b> The building is not within and land affected by an Article 4 Direction.</p>

## **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 on 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 a loss of a health centre or registered nursery.

The development does not meet the fire risk condition.

The development is not with a conservation area.

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 the nationally described space standards issued by the Department of Communities and Local Government on 27<sup>th</sup> March 2015. The requirement to meet national space standards was introduced to prior approval applications on 6<sup>th</sup> April 2021.

In this instance, the accommodation proposed is 3 no. dwellings which are in the form of flats. Taking each proposed unit in turn:

### *No. 2 Thornton Lodge Road*

No. 2 is proposed to be a one bedroom ground floor flat. The Technical Housing Standards document states that a one bedroom flat for one person

(minimum assessed) on one storey should be at least 37 or 39 square metres dependant on whether the bathroom has a shower or a bath. In this instance the proposed internal accommodation proposed is approximately 48 square metres which would accord with the recommended space standards. However, the bedroom is shown to sleep two persons which requires 50 square metres of space thus contrary to space standards.

#### *No. 4 Thornton Lodge Road*

No. 4 is proposed to be a two bedroom ground floor flat. The Technical Housing Standards document states that a two bedroom flat for three persons over one storey (minimum assessed) should be at least 61 square metres and for four persons 70 square metres. In this instance the proposed internal accommodation proposed would be approximately 56 square metres and therefore falls short of the recommended space standards and therefore cannot benefit from a prior approval.

#### *No. 6 Thornton Lodge Road*

No. 6 is proposed to be a 2 no. bedroom property over two storeys. The Technical Housing Standards document states that a two bedroom property for three persons over two storeys (minimum assessed) should be at least 70 square metres. In this instance the proposed internal accommodation would be approximately 71 square metres. Whilst this would meet the standards set for 3 persons, it falls short acceptable space for 4 persons which would require a minimum of 79 square metres. Provided that a maximum of three persons reside at the property, the proposal would accord with the recommended space standards. This can be conditioned should approval be recommended.

### **Publicity**

Publicity end date: 29<sup>th</sup> June 2023

As a result of the publicity period, one letter of representation has been received within the following being a summary of comments:

- Request that a planning condition is imposed to ensure that parking remains and that the parking area is not removed during or after building works
- Request that noisy construction hours condition is imposed due to impact on multiple households
- Incorrect red line boundary

These issues shall be addressed within the assessment of the application.

### **Assessment**

Transport and highway impacts:

There are 6 no. off-street parking spaces provided at the property to support the flats which would equate to two spaces per unit. This would conform with current parking standards. As such, the change of use is not considered to generate additional parking over and above the use of the premises as a restaurant. In addition, the property is located with the Thornton Lodge Local Centre as defined within the Kirklees Local Plan and therefore local amenities are close to the premises. In addition, the building is located close to the A62 Manchester Road which hosts a regular bus service and therefore situated within a sustainable location. As such, in terms of highway and transport impacts, the proposal is considered acceptable.

In terms of waste management and traffic impacts from bin wagons, the Council Waste Strategy Officer has responded formally to the proposed works and considers that storage of bins on the pavement on Thornton Lodge Road would be unacceptable. Preference is given to storage at the rear of properties. It is recommended that wheeliebins should be stored at the rear of the property with the resident's presenting bins on Thornton Lodge Road on collection day at a Bin Collection Point (BCP). If this is unviable or access through the alleyway to the rear is not practicable with a wheeliebin, storage maybe required to the front of the properties. This would need to be located to not impact on parking provision.

Contamination risks:

The site is not located within an area of potentially contaminated land and therefore there are minimal concerns.

Flooding risk:

None

Impact in terms of noise:

The application site is near to the busy A62 Manchester Road which is likely to have an adverse impact on future occupiers of the site. As such, Environmental Services have requested that a noise report be submitted which should determine the existing noise climate taking all likely noise sources into consideration and then detail how this will affect the proposed development. It should also detail any noise mitigation measures that will be required so that satisfactory sound levels will be achieved both indoors and at any outdoor amenity areas at the development. If windows need to be kept closed to achieve satisfactory indoor sound levels, then the mitigation measures will also need to include specific details of the alternative ventilation that will be provided as a substitute to opening windows.

Given that one of the proposed flats fails to meet the space standards and therefore does not benefit from permitted development regulations it is considered to request this information would be unreasonable.

Should the application be successful, a condition relating to construction hours can be attached.

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

For clarification purposes, the interpretation under Part 3 of Schedule 2 provides an interpretation of what a 'habitable room' means and states that habitable rooms '*means any rooms 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.*'

Proposed plans have been submitted which includes both elevational and floor plan details. The plans demonstrate the following in terms of habitable rooms:

- No. 2 – one bedroom ground floor flat – habitable rooms include the following:

Living room – door opening with no windows although the current arrangement is not compatible with the proposed layout. If using the current frontage, light should be available for the living room.

Kitchen/diner – 1 x window opening

Bedroom – no windows other than roof light which currently does not exist and is likely to require planning permission.

Bathroom – N/A as non habitable

In terms of this unit, due to the lack of openings to the bedroom under present arrangements, it is not considered that there would be adequate natural light to all habitable rooms.

- No. 4 – two bedroom ground floor flat – habitable rooms include the following:

Living room – 1 x door opening and 1 x window opening

Kitchen/diner – 1 x new window

Bedroom 1 – no windows other than roof light which currently does not exist and is likely to require planning permission.

Bedroom 2 – no windows other than roof light which currently does not exist and is likely to require planning permission.

Bathroom – N/A as non habitable

With regard to this unit, it is considered that the current openings within the living room and kitchen/diner would provide adequate natural light to these habitable rooms. However, as with No. 2 due to the lack of openings to the bedroom under present arrangements, it is not considered that there would be adequate natural light to all habitable rooms.

No. 6 – two bedroom property over two floors

Ground floor living room – 1 x door and 1 x window opening  
Ground floor kitchen/diner – 1 x window opening  
First floor bedroom 1 – 1 x window opening  
First floor bedroom 2 – 1 x window opening  
First floor bathroom – N/A as non habitable however 1 x window opening proposed

It is considered that in this instance, as this unit would contain glazed openings within the external elevations to all habitable rooms within the proposed development there would be adequate natural light to each habitable room.

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

The proposed change of use to residential does not impact only any of the above uses.

Other matters:

The site is located within 6 metres of an Air Quality Management Area (AQMA 10) which was declared due to exceedances mean air quality objective for nitrogen dioxide. There it is advised that the potential future occupiers of the development to be exposed to poor air quality.

Representations:

One letter of representation has been received with the following being a summary of comments and LPA response:

- Request that a planning condition is imposed to ensure that parking remains and that the parking area is not removed during or after building works

Response: Parking has been addressed above

- Request that noisy construction hours condition is imposed due to impact on multiple households

Response: This has been addressed above

- Incorrect red line boundary

Response: The area in question does not affect the outcome of the recommendation.

## **Recommendation**

The application has been submitted with sufficient information to allow the Local Authority to assess the above relevant 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 that adequate natural light to all habitable rooms under current fenestration arrangements and therefore the application is to be refused.

Recommendation: Prior Approval Refused

### **Decision Authorisation - Delegated Powers**

**Application number:** 2023/91469

**Officer Recommendation:** Refused

#### **Reason:**

Article 3(9)A 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 standards issued by the Department of Communities and Local Government on 27<sup>th</sup> March 2015. The requirement to meet the national space standards was introduced to prior approval applications on 6<sup>th</sup> April 2021.

No. 2 is proposed to be a one bedroom ground floor flat. The Technical Housing Standards document states that a one bedroom flat for one person (minimum assessed) on one storey should be at least 37 or 39 square metres dependant on whether the bathroom has a shower or a bath. In this instance the proposed internal accommodation proposed is approximately 48 square metres which may accord with the recommended space standards. However, the bedroom is shown to sleep two persons which requires 50 square metres of space thus contrary to space standards.

No. 4 is proposed to be a two bedroom ground floor flat. The Technical Housing Standards document states that a two bedroom flat for three persons over one storey (minimum assessed) should be at least 61 square metres and for four persons 70 square metres. In this instance the proposed internal accommodation proposed would be approximately 56 square metres and therefore falls short of the recommended space standards and therefore cannot benefit from a prior approval.

No. 6 is proposed to be a 2 no. bedroom property over two storeys. The Technical Housing Standards document states that a two bedroom property for three persons over two storeys (minimum assessed) should be at least 70 square metres. In this instance the proposed internal accommodation would be approximately 71 square metres. Whilst this would meet the standards set for 3 persons, it falls short acceptable space for 4 persons which would require a minimum of 79 square metres. Provided that a maximum of three persons reside at the property, the proposal would accord with the recommended space standards

The external alterations as shown on the proposed plan for no.2 & no.4 do not benefit from any planning permission and the provision set out in Class MA, Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order (as amended) do not provide for such permission either. Consequently the assessment of natural light is taken under current fenestration arrangements for each proposed dwellinghouse. Therefore all bedrooms in no. 2 & no.4 lack any natural light and are therefore contrary to paragraph MA.2 (2)(f) of Class MA.

Plans and specifications schedule:-

<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Date Received</b>
Location plan, plans elevations and view as existing	2304 – 01		25 <sup>th</sup> May 2023
Plans, elevations and view as proposed	2304 – 02		25 <sup>th</sup> May 2023

**Report date:** 7<sup>th</sup> July 2023