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/91905/W**
Site Address	**2, Common Road, Bay Hall Mills, Birkby, Huddersfield, HD1 5EU**
Description	**Prior notification for change of use from office to two dwellings (within a Conservation Area)**
Recommending Officer	**Katie Chew**

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:23-Aug-2023

Officer Report

Application: 2023/91905

Site Description: 2, Common Road, Bay Hall Mills, Birkby, Huddersfield, HD1 5EU

The application site comprises of a two-storey stone-built property which adjoins other buildings which are in use for commercial and residential purposes. The site is located on Common Road in Birkby, with the building currently being in use (unlawfully) as 'Tuition Time' – Use Class F1(a).

Proposal: Prior notification for change of use from office to two dwellings (within a Conservation Area).

Dwelling 1 (Flat 7) will have a gross internal floor area of around 64sqm and will comprise of 2 bedrooms, bathroom, and open plan kitchen/dining area.

Dwelling 2 (Flat 8) will have a gross internal floor area of around 77sqm and will comprise of 2 bedrooms, bathroom, and open plan kitchen/dining area.

Both apartments are located on the ground floor and are to be accessed from the existing entrance out on to Common Road on the north-western elevation of the building.

History of negotiations/amendments received

Amendments were sought in the first instance to amend the site address as it caused some confusion amongst residents within the area. No further amendments were requested as the proposals were deemed to be wholly unacceptable upon submission.

Relevant Planning History

2020/91247 – Certificate of Lawfulness for existing use of car repairs and valeting (within a Conservation Area). Refused 6th July 2020.

2020/91125 – Removal condition 4 (use of dwellings) on previous permission 2021/91033 for erection of first floor extension to form 5 student apartments (within a Conservation Area). Withdrawn/Invalid 30th June 2020.

2014/92996 – Change of use of part of play gym to form 2-bed student apartment (within a Conservation Area). Approved 19th November 2014.

2013/93729 – Change of use from shop/office to daycare centre/nursery/play gym (within a Conservation Area). Approved 18th February 2014.

2012/92671 – Discharge of condition 5 on previous application no. 2012/91033 for erection of first floor extension to form 5 no. student apartments (within a Conservation Area). Approved 17th December 2012.

2012/91033 – Erection of first floor extension to form 5 no. student apartments (within a Conservation Area). Approved 13th June 2012.

2011/92878 – Erection of first floor extensions to form 5 no. student apartments (within a Conservation Area). Withdrawn 5th March 2012.

2011/90536 – Erection of single storey office building with semi basement car park (within a Conservation Area). Approved 4th May 2011.

2009/91673 – Change of use from insurance to taxi booking office & associated parking (within a Conservation Area). Refused 3rd September 2009. Dismissed at appeal 9th June 2010.

99/90137 – Conservation Area consent for demolition of part of warehouse. Approved 26th March 1999.

99/90081 – Demolition of part of warehouse and formation of 12 no. car parking spaces (within a Conservation Area). Approved 26th March 1999.

98/91183 – Erection of new roof and external alterations (incl. new roller shutter door). Approved 18th June 1998.

Planning Enforcement

COMP/21/0542 – Non-compliance with Enforcement Notice (COMP/12/0354) & erection of canopy/extension.

COMP/20/0518 – Alleged unauthorised change of use to D1 (education/tuition centre). Resolved.

COMP/20/0110 – Alleged breach of planning conditions. No further action.

Procedural Matters and Policy Context

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 states that 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;	**Fail:** Whilst the applicant has stated within the submitted application forms that the building has not been occupied 3 months prior to the date of this application. It appears that the proposals fail this criterion as publications online suggest that the building is still operating as 'Tuition Time' as is proposed to be in the near future.
(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;	**Fail:** Based upon the information submitted by the applicant, the use of the building, for a continuous period of at least 2 years prior to the date of this application has been offices. However, this is based upon limited evidence and from online research and previous enforcement issues at the site it appears that the building has been used as 'Tuition Time' which is a tutoring business and is therefore considered to be fall within the then Class D1 and now Class F1(a) of the Use Classes Order. There is no evidence the use of the building was for offices since the building was constructed. As it is considered the education use is materially different to an office use principally by reason of the different character of use, it appears from the evidence available the use of the building was unauthorised when commenced sometime after 2014. Irrespective of whether or not the education use continues to operate the site has been subject to a material change of use without the benefit of planning permission and as such rendering the site as a nil use. Neither a nil use or a use for education are listed as uses in sub-paragraph (2).
(c) The cumulative floor space of the existing building changing use	**Pass:** The cumulative floor space of the existing building changing use

under Class MA exceeds 1500 square metres;	under Class MA would not exceed 1500sqm.
(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 development is not in any category in paragraph (d).
(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 1st 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.

Taking the above assessment into consideration, the proposals are not deemed to meet 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. This is due to the host building still operating as 'Tuition Time' and therefore is not, and has not, been vacant for a continuous period of at least 3 months immediately prior to the date of the application for prior approval. Even in the event the building would become or is vacant it is still considered not to benefit from the permitted development right in view of the unauthorised use rendering the building with a nil use should it be vacant. Unless the Local Planning Authority has issued an enforcement notice to allow a previous lawful use to be resurrected under the provisions of section 57, there is no lawful right to commence a previous lawful use following a period during which the building was being used for unlawful purposes (*Young v Secretary of State [1983] 2 AC 662*). The proposals are therefore not considered to be permitted development. Nevertheless, for completeness a full assessment of the proposals against Class MA have been undertaken below.

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 the 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*

(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; 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.

Representations

Part W of Schedule 2, Part 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (8) states that:

'*The local planning authority must give notice of the proposed development—*

(a)by site display in at least one place on or near the land to which the application relates for not less than 21 days of a notice which—
(i)describes the proposed development;
(ii)provides the address of the proposed development;
(iii)specifies the date by which representations are to be received by the local planning authority; or
(b)by serving a notice in that form on any adjoining owner or occupier'.

In this instance the LPA have advertised by Neighbour Notification Letters to any adjoining owners or occupiers of the site, details of which are outlined below.

Final publicity expires:

Neighbour Letters – Expired 8th August 2023.

3 representations in objection to the proposals have been received, comments are summarised below.

- Concerns in respect of noise pollution.

Officer note: Noted. The Council's Environmental Health Officers were consulted and raised no concerns in respect of noise pollution from the proposed dwellings but do request that should planning permission be granted, a condition be attached for the submission of a Noise Impact

Assessment to protect the future occupier's amenity given the sites location within a mixed residential/commercial area.

- Concerns in respect of the increase in parking/vehicles.

Officer note: Noted. The Council's Highways Team have been consulted on the proposals and their comments and an assessment can be found within the Transport and Highways Impacts section of this report.

- Concerns in regard to waste and fly-tipping.

Officer note: Noted. The Council's Environmental Health team were consulted and raised no concerns in respect of this.

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 consulted on the proposals and provided the following comments.

The application site is located off of Common Road in Birkby, which is an adopted road. The site is bounded by Miln Road, Common Road and Bay Hall Common Road and is situated approximately 300m from the centre of Birkby. The area consists of a mix of uses, the majority of which do not have the benefit of off-street parking.

The application seeks approval for the change of use from office to two 2-bedroomed dwellings. Highways guidance suggests that a minimum of 2 off-street car parking spaces should be provided for 2-3 bedroomed dwellings. In this case, a minimum of 4 off-street car parking spaces should be provided.

This application does not include for the provision of any off-street car parking stating that the previous use was for office and tuition area which had significantly more cars on the road surrounding the area and that the flats will drastically reduce the impact on highways and circulation within the area. However, no evidence has been submitted in support of this claim.

A previous application for flats on this site included for the provision of 4 off-street car parking spaces on nearby land owned by the applicant and this was conditioned as part of the approval. This provision no longer appears to be

available, with the land in question currently being used by what appears to be a garage business. As a result, it is assumed that the occupiers of these flats have to park on street. There is also an ongoing application for a café to be erected on this land despite the area being conditioned to be used as a parking area for flats previously approved.

On street parking is therefore already at a premium in this location and any further development leading to additional on street parking could not be supported.

Highways Development Management therefore could not support the application as submitted and clarification of the existing and proposed car parking provision for the whole site would be required.

Contamination Risks:

MA.2(2)(b) requires the Local Planning Authority to assess the risks of contamination in relation to the building.

The proposal is for the change of use of offices to 2 dwellings, and from the submitted information, it appears unlikely that there would be any groundworks. The proposed development site is shown on the Council's GIS mapping system as being potentially contaminated land due to its previous use as a Dye Works (ref 178/9). The Council's Environmental Health team therefore request that should approval be granted, a condition for unexpected, contaminated land be attached should any groundworks be involved.

Flooding Risk:

Whilst it is acknowledged that the site is located within a critical drainage area, this is localised flooding and is not located within Flood Zones 2 or 3, therefore MA.2(2)(c) is not of a concern in this instance.

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.

Given the sites location adjacent to a number of commercial and industrial units, noise from such uses is likely to have an adverse impact on future occupiers of the site. As such, the Council's Environmental Health Officers request a pre-commencement condition be attached should planning permission be granted requiring 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. Officers also note that the construction phase will need to be controlled to ensure that any noise or other construction activity does not lead to a loss of amenity, therefore an informative will be included which restricts noisy construction activities at the site.

Impact to Conservation Areas:

The host building is located within the boundary of Birkby Conservation Area; however, no external alterations are proposed and therefore it is not considered that the proposal would harm the character or significance of the Birkby 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".*

In terms of natural light, the submitted floor plan demonstrates that all habitable rooms within the dwellings would benefit from at least 1 window. Whilst this is welcomed, it is acknowledged that within Flat 7 given the location of the window, this would be set around 6m away from the kitchen/dining area and therefore the level of natural light into this area of the dwelling would be poor. This is further compounded by the fact that the window would look out towards a blank gable elevation, located approximately 3.5m away. Officers therefore consider that the level of light and outlook gained from this window would be insufficient in this instance. Furthermore, looking at Flat 8, again this kitchen/dining area would benefit from just 1 external window located around 5.5m away from the kitchen/dining area, with the dining area shown to be around the corner from this opening. This relationship is again considered to be insufficient and whilst the level of outlook is better, the overall access to light and outlook is deemed to be unacceptable on this occasion.

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 Nursey or 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 37sqm or does not meet nationally described space standards issued by the Department for Communities and Local Government on 27th March 2015.

The total floorspace of each dwelling is set out below, accompanied with a brief description of whether it complies with the Nationally Described Space Standards.

Flat 7 comprises of 2 double bedrooms, bathroom and open plan kitchen/dining/living area. This flat would therefore have a maximum of 4 people. The total floorspace of the dwelling would be 64sqm, where the nationally described space standards set out a minimum gross internal floor area of 70sqm for single storey 2-bedroomed dwellings with 4 bed spaces (persons). Therefore Flat 7 would fail to comply.

Flat 8 comprises of 2 double bedrooms, bathroom and open plan kitchen/dining/living area. This flat would therefore have a maximum of 3 people. The total floorspace of the dwelling would be 77sqm, where the nationally described space standards set out a minimum gross internal floor area of 61sqm for single storey 2-bedroomed dwelling with 4 bed spaces (persons). Therefore Flat 8 would comply.

Taking the above into consideration Flat 7 would fall short of the recommended space standards and therefore cannot benefit from prior approval.

Conclusion

In conclusion, whilst Officers note that the application has not been submitted with sufficient information to allow the Local Authority to assess the noise

impacts, that there are concerns in respect to the lack of off-street parking, and that it is considered that the internal gross floor space of Flat 7 would not meet the space standards for the two double bed spaces proposed, and that inadequate light provision in the living areas of both Flats 7 & 8 would also provide reasons for refusal. As this application has failed to meet the initial requirements as set out by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) Schedule 2, Part 3, Class MA.1, due to the host building still operating as 'Tuition Time' and therefore is not, and has not, been vacant for a continuous period of at least 3 months immediately prior to the date of the application for prior approval or benefits from a lawful use as office. The proposals are therefore not considered to be permitted development, and therefore a full assessment into MA.2, whilst provided for completeness, is not required as the current scheme as submitted would not progress past the first stage of assessment. Therefore the reason for refusal will solely relate to the development not meeting Class MA.1 of Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Recommendation:

Prior approval refused.

Decision Authorisation - Delegated Powers

Application Number: 2023/91905

Officer Recommendation: Refuse.

Reasons for Refusal:

Firstly, the applicant has failed to demonstrate that 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. Secondly and by reason of the educational use of the part of the building subject to this application the building does not benefit from a lawful use under Class E of the Use Classes Order 1987 (as amended) or any use specified within paragraph MA.1(2) of Part 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). As such the proposed development fails to meet the limitations under paragraphs M.1(a) and M.1(b),

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

Plans and specifications schedule:-

Plan Type	Reference	Web ID	Date Received
Existing Layout and Elevations	2315/01	-	26th June 2023
Proposed Layout and Elevations	2315/02	A	4th July 2023

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 preapplication advice service available, complied with the Kirklees Development Management Charter 2015 and otherwise actively engaged with the applicant in dealing with the application. Amendments were sought in the first instance to amend the site address as it caused some confusion amongst residents within the area. No further amendments were requested as the proposals were deemed to be wholly unacceptable upon submission.

Report Dated:

16/08/2023