

**KIRKLEES METROPOLITAN COUNCIL
INVESTMENT & REGENERATION SERVICE**

DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended) – SECTION 70

DELEGATED DECISION TO DETERMINE PLANNING APPLICATIONS

Reference No:	2023/62/92164/E
Site Address:	Block A, Alexandra Mills, Alexandra Road, Batley, WF17 6JA
Description:	Change of use from club to day nursery
Recommending Officer:	Nicole Helliwell

DECISION - REFUSE

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.

Sarah Longbottom

AUTHORISED OFFICER

Date: 02 February 2024

Officer Report

Reference No. 2023/62/92164/E

Site Address: Block A, Alexandra Mills, Alexandra Road, Batley, WF17 6JA

Proposal: Change of use from club to day nursery

Site Description

The application relates to Block A, Alexandra Mills, a two storey building situated in Batley. The building was formerly used as a club and is faced in stone with a flat/shallow dual-pitched roof. The wider area comprises predominately commercial properties of varying materials and architectural styles. The site is not within a conservation area, nor are there any listed buildings or public right of ways within close proximity.

Description of Proposal

The application seeks planning permission for the change of use of a former club to a day nursery. Permission is not required for the internal alterations to the building and therefore, the only matters for consideration are the proposed change of use and external alterations. The details of the proposal are summarised below:

- The former club will be converted into a day nursery
- The proposed opening times are Monday to Friday 7.45am to 19:45pm and Saturday 7.45am to 17:45pm.
- There would be 3 full time employees.
- The proposal would include no external alterations to the original building.

Relevant Planning History

- **2006/95303:** Erection of canopy to front with lighting to underside. [Planning application details | Kirklees Council](#) – Conditional Full Permission
- **2006/95302:** Erection of 1 no. Illuminated fascia sign. [Planning application details | Kirklees Council](#) - Advertisement Consent Granted
- **2004/91258:** Erection of gates and railings and formation of disabled access ramp. [Planning application details | Kirklees Council](#) – Conditional Full Permission
- **2004/91079:** Erection of internally illuminated individual letters, externally illuminated fascia signs and non-illuminated signs and flags for bar and motor museum. [Planning application details | Kirklees Council](#) – Advertisement Consent Granted
- **99/93543:** Variation of condition 8 relating to goods sold from the site on previous permission 96/62/90311 for change of use and external alterations from retail/manufacturing/storage to vintage car collection and display/steam machinery display/bi-plane display/cafe/retail/bar/sports and play equipment and offices. [Planning application details | Kirklees Council](#) – Conditional Full Permission

- **97/92391:** Change of use from manufacturing/storage to candle manufacturing/exhibition and ancillary retail. [Planning application details | Kirklees Council](#) – Conditional Full Permission
- 96/93723: Change of use from gallery and office to fox's visitor centre, incorporating exhibition and display with ancillary retail. [Planning application details | Kirklees Council](#) – Conditional Full Permission
- **96/90311:** Change of use and external alterations from retail/manufacturing/storage to vintage car collection and display/steam machinery display/bi-plane display/cafe/retail/bar and offices. [Planning application details | Kirklees Council](#) – Conditional Full Permission

Representations

The application was advertised by neighbour letters, which expired on 6th December 2023. As a result of the above publicity, no representations have been received.

Parish/Town Council Comments

Not Applicable.

Local Ward Members

Not Applicable.

Consultation Responses

The following is a brief summary of Consultee advice (more details are contained in the 'Assessment' section of the report, where appropriate):

[KC Environmental Health](#) – No objections subject to recommended conditions

[KC Highways Development Management](#) – Objection

[KC Lead Local Flood Authority](#) – Objection

[The Environmental Agency](#) - Objection

[KC Ecology](#) – Preliminary Roost Assessment or Bat Scoping Survey is required prior to determination.

Planning Policy Background

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The statutory Development Plan for Kirklees is the Local Plan (adopted 27th February 2019).

The site is UNALLOCATED on the Kirklees Local Plan Proposals Map. The most relevant policies for consideration in this case are:

- **LP 1** - Achieving Sustainable Development

- **LP 2** - Place Shaping
- **LP 3** - Location of New Development
- **LP 7** - Efficient and Effective Use of Land and Buildings
- **LP 21** - Highway Safety and Access
- **LP 22** - Parking
- **LP 24** - Design
- **LP 27** - Flood Risk
- **LP 30** - Biodiversity & Geodiversity
- **LP 48** - Community Facilities and Services
- **LP 52** - Protection and Improvement of Environmental Quality
- **LP 53** - Contaminated and Unstable Land

In this case, the following SPDs are applicable:

- Highways Design Guide SPD (adopted 4th November 2019)
- Biodiversity Net Gain Technical Advice Note (adopted 29th June 2021)

National Policies and Guidance

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) updated 20th July 2021, the Planning Practice Guidance Suite (PPGS) first launched 6th March 2014 together with Circulars, Ministerial Statements and associated technical guidance. The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications. Most specifically in this instance, the below chapters are of most relevance:

- **Chapter 2** - Achieving Sustainable Development
- **Chapter 4** - Decision-Making
- **Chapter 6** - Building a Strong, Competitive Economy
- **Chapter 11** - Making Effective Use of Land
- **Chapter 12** - Achieving Well-Designed Places
- **Chapter 14** - Meeting the Challenge of Climate, Flooding and Coastal Change
- **Chapter 15** - Conserving and Enhancing the Natural Environment

Assessment

1. Principle of Development

The site is without notation on the Kirklees Local Plan (KLP). Policy LP1 of the KLP states that when considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF.

Policy LP2 sets out that all development proposals should seek to build on the strengths, opportunities and help address challenges identified in the

Local Plan. Policy LP24 of the KLP is relevant and states that “*good design should be at the core of all proposals in the district*”.

This application is for the change of use from a vacant café bar to a day nursery at Block A, Alexandra Mills. Whilst licensed premises in the form of public houses can be considered to be a form of community facility, café bars like in this application are not considered to be community facilities, therefore the application does not need to be considered against the requirements of Policy LP48 on community facilities.

The site is located approximately 530m from the nearest designated centre at Batley Town Centre (TCB3) as designated in the Kirklees Local Plan, which was adopted on 27th February 2019. The site is unallocated; however, it is located within SFRA Flood Zone 2 and Environment Agency Flood Zones 2 and 3. Non-residential sites such as those used for nurseries and educational establishments are a more vulnerable use as set out in the flood risk classification in Annex 3 of the NPPF. Paragraph 168 of the NPPF states that applications for some minor developments and changes of use should not be subject to the sequential or exception tests but should still meet the requirements for site-specific flood risk assessments set out in footnote 55 which states that site-specific flood risk assessments are required for all development in Flood Zones 2 and 3. The applicant has included a Flood Risk Assessment within their submission and specific advice on this will be available from the LLFA.

In this case, the principle of development is considered acceptable, and shall be assessed against other material planning considerations, including visual and residential amenity, as well as highway safety. These issues along with other policy considerations will be addressed below.

2. Impact on Visual Amenity

Policy LP24 of the Kirklees Local Plan states that proposals should promote good design by ensuring the form, scale, layout, and details of all development respects and enhances the character of the townscape, extensions are subservient to the original building, are in keeping with the existing buildings in terms of scale, materials and details.

The NPPF also offers guidance relating to design in Chapter 12 (achieving well designed places) whereby Paragraph 131 provides a principal consideration concerning design which states: “*The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.*”

The submitted plans confirm that no external alterations are proposed as part of the application. On this basis, it is considered that the proposed change of use would not have any significant visual impact on the character and appearance of the surrounding area. However, it must be noted that any advertisements would require a separate planning permission from the Council and would need to be submitted as a new planning application.

Having taken into account the above, it is considered that the proposed development would be acceptable from a visual amenity perspective, in accordance with Policy LP24 of the Kirklees Local Plan and Chapters 12 and 13 of the NPPF.

3. Impact on Residential Amenity

Consideration in relation to the impact on the residential amenity of neighbouring occupants shall now be outlined, taking into account Policy LP24 c), which sets out that proposals should promote good design by, amongst other things, extensions minimising impact on residential amenity of future and neighbouring occupiers.

The proposed development would not include any exterior alterations to the building and therefore the proposal would not cause any additional overlooking, overbearing or overshadowing harm to the residential amenity of the neighbouring occupants, over and above the existing arrangements on site.

Having considered the above factors, the proposal is not considered to result in any adverse impact upon the residential amenity of any surrounding neighbouring occupants, complying with Policy LP24 of the Kirklees Local Plan (b) in terms of the amenities of neighbouring properties and Paragraph 135(f) of the National Planning Policy Framework.

4. Impact on Highway Safety

Policies LP21 and LP22 of the Kirklees Local Plan relate to access and highway safety and are considered to be relevant to the consideration of this application. The Council's adopted Highway Design Guide also seeks to ensure acceptable levels of off-street parking are retained and are also considered to be of relevance.

This application seeks approval to change the use from a club to a day nursery at Block A, Alexandra Mills. As such, KC Highways Development Management have been formally consulted as part of the application, as the proposal would intensify the use at the site.

The application site is located at the junction where A652 Bradford Road and Alexandra Road intersect. Alexandra Road is a busy one-way street linking Bradford Road to the Rouse Mill Lane/Grange Road/Mill Lane roundabout. There are existing waiting restrictions to both sides of Bradford Road and to most of the length of Alexandra Road to prevent on-street parking. On-street parking is only available on the northern side of Alexandra Road in two areas (25m from the Bradford Road junction approximately 8 spaces and to either side of the Alexandra Mills access 150m to the east). The site has no off-street parking facilities and there is no off-street nursery drop off and pick up spaces proposed. Given that on-street parking is likely to be at a premium along Alexandra Road and there is no off-street nursery drop off and pick up spaces proposed, the proposal cannot be supported and will be recommended refusal on highway safety grounds

In view of the above, it is considered that the proposal would cause detrimental harm to the safe and efficient operation of the highway network and would fail to accord with Policies LP21 and LP22 of the Kirklees Local Plan, guidance within the Council's Highways Design Guide SPD, and Chapter 9 of the National Planning Policy Framework.

5. Other Matters

Climate Change

On 12th November 2019, the Council adopted a target for achieving 'net zero' carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan pre-dates the declaration of a climate emergency and the net zero carbon target, however it includes a series of policies which are used to assess the suitability of planning applications in the context of climate change. When determining planning applications, the Council will use the relevant Local Plan policies and guidance documents to embed the climate change agenda.

In this case, due to the nature of the proposal is not considered reasonable to require the applicant to put forward any specific resilience measures.

Construction Noise

KC Environmental Health have recommended a condition to control the proposed hours of use should the application be approved. This is to

ensure that the proposed use does not give rise to the loss of amenity to nearby residential properties, by reason of noise or disturbance at unsociable hours.

Contaminated Land

No information has been submitted in relation to soft landscaping particularly for the children's outside play area. The end use is classed as sensitive, whilst KC Environmental Health have no objections to permission being granted, Officers require further detailed information as the site is on land identified as potentially contaminated. In the absence of this, contaminated land conditions are recommended.

Ecology

No ecological information has been submitted along with the application; therefore, the assessment of the ecological impacts is based on the limited information available. The site is located within the bat alert zone. Therefore, as the surrounding area provides suitability for bats and the proposals include internal alterations to the building, particularly where bats could utilise these areas for roosting, there is a reasonable likelihood of disturbance to roosting bats. The government circular on Biodiversity and Geological Conservation (ODPM, 2005) and explanatory note from Natural England (Natural England, 2020) indicates that information of protected species, and in particular European protected species (including bats), should be made available prior to determination.

KC Ecology have advised that the applicant should engage with a suitably qualified ecologist to undertake a daytime inspection for bats (also known as a Preliminary Roost Assessment or Bat Scoping Survey). In many cases this will be adequate to determine whether bats are likely to be affected. If the survey indicates that further activity surveys are required to determine the presence/likely absence of bats, this information should also be supplied. Bat activity surveys should be carried out between May and August and in accordance with Bat Conservation Trust guidelines (Collins, 2023). The application should not be determined prior to obtaining survey information regarding bats.

Flood Risk

The site lies within Flood Zones 2 and 3, with a medium/high probability of flooding. The application is for a day nursery, which is considered to be a 'more vulnerable' land use in Annex 3 of the National Planning Policy Framework. It is therefore necessary for the application to pass the Sequential Test and Exception Test and to be supported by a site-specific flood risk assessment (FRA), which can demonstrate that the 'development will be safe for its lifetime taking account of the vulnerability

of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall'.

A Flood Risk Assessment by PAD Architecture, (un-referenced and undated, published online on 19 October 2023), has been submitted in support of the application. However, the FRA does not comply with the requirements for site-specific flood risk assessments, as set out in Paragraphs 20-21 of the Flood Risk and Coastal Change planning practice guidance and its site-specific flood risk assessment checklist. The FRA does not therefore adequately assess the flood risks posed by the development. In particular, the FRA fails to consider how people will be kept safe from the identified flood hazards. Furthermore, no mitigation measures (such as raised finished floor levels etc) have been specified. On this basis, in the absence of an acceptable Flood Risk Assessment (FRA), the Environment Agency object to this application and recommend that planning permission is refused.

Drainage

There is no increase in drained area with this conversion of the former mill from a club to a day nursery therefore, the LLFA accepts that the proposal will not increase flood risk. However, the development is located partly in Flood Zone 3 with the remainder in Flood Zone 2, therefore the proposed change of use may bring the development into a more vulnerable category. The Environment Agency's standing advice should be followed for this development to determine if the proposed change of use is allowable. The developer should provide evidence that the EA's advice has been considered. In addition, the developer must submit an Evacuation Plan indicating when and where occupants of the building will be directed to an area of safety in the event of a flood event. On this basis, Kirklees Lead Local Flood Authority objects to this development until the issues outlined above are addressed.

There are no other matters relevant to the determination of this application.

6. Representations

No representations were received following the statutory publicity.

7. Negotiations

A request was made to submit a Preliminary Roost Assessment or Bat Scoping Survey, an Evacuation Plan indicating when and where occupants of the building will be directed to an area of safety in the event of a flood event and a Flood Risk Assessment which addresses the points outlined

within the Environment Agency's consultation response. However, no further information was submitted by the applicant/agent.

8. Conclusion

The NPPF has introduced a presumption in favour of sustainable development. The policies set out in the NPPF, taken as a whole, constitute the Government's view of what sustainable development means in practice.

This application for the change of use of club to day nursery at Block A, Alexandra Mills has been assessed against relevant policies in the development plan as listed in the policy section of the report, the National Planning Policy Framework and other material considerations. It is considered that the adverse impacts of granting permission would significantly and demonstrably outweigh any benefits of the development when assessed against policies in the NPPF and other material considerations. Therefore, the application is recommended for refusal.

Recommendation: Refuse

Decision Authorisation: Delegated Powers

Application Number: 2023/92164

Officer Recommendation: Refuse

Reasons for Refusal

1. The site has no off-street parking facilities and there is no off-street nursery drop off and pick up spaces proposed. Therefore, by reason its location on a classified road, it is considered that the proposal would cause detrimental harm to the safe and efficient operation of the highway network. To permit the development would be contrary to Policies LP21 and LP22 of the Kirklees Local Plan, guidance within the Council's Highways Design Guide SPD, and Chapter 9 of the National Planning Policy Framework.
2. The applicant has failed to demonstrate, through submission of adequate ecological information, that the ecological impact of the proposed development can be adequately mitigated. Given the failure to submit a preliminary roost assessment to demonstrate whether protected species would be affected by the development, the proposal is contrary to Policy LP30 of the Kirklees Local Plan and Chapter 15 of the National Planning Policy Framework.
3. The applicant has failed to demonstrate, through submission of an adequate Flood Risk Assessment, that the impact of flooding on the proposed development has been satisfactorily addressed. The submitted Flood Risk Assessment fails to consider how people will be kept safe

from the identified flood hazards and does not sufficiently assess the flood risks posed by the development. Given the failure to demonstrate that the site would be viable for safe occupation, the proposal is contrary to Policy LP27 of the Kirklees Local Plan and Chapter 14 of the National Planning Policy Framework.

Plans and specifications schedule: -

Plan Type	Reference	Revision	Date Received
Location Plan	-	-	19/10/2023
Proposed and Existing Floor Plans & Elevations	PAD.352.185	-	19/10/2023
Flood Risk Assessment	-	-	19/10/2023

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 Planning 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.

Although the Kirklees Development Management Charter together with the National Planning Policy Framework and the DMPO 2015 encourages negotiation/engagement between Local Planning Authorities and agents/applicants, this is only within the scope of the application under consideration. Following comments received from the Environment Agency, KC Lead Local Flood Authority, KC Ecology Coal Authority, further information was requested. However, no further details were provided. Furthermore, the development could not be made acceptable from a highway safety perspective.

Dated: 30/01/2024

