

PLANNING POLICY AND SEQUENTIAL RETAIL ASSESSMENT

Mixed-use residential and retail development at 42 Mill
Road, Dewsbury WF13 2HH.



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1.0 INTRODUCTION

- 1.1 RR Planning Ltd, based in Leeds, West Yorkshire is a planning consultancy specialising in retail matters throughout the United Kingdom and advises retail and non-retail clients on change of use proposals and other retail proposals. We specialise in town centre uses including restaurant and hot food takeaway as well licenced gaming establishments and tanning shop uses. We are instructed by Kufic Architects to prepare a planning and retail sequential statement.
- 1.2 The subject proposal is an application for a mixed-use building comprising of a retail unit on the ground floor and two 2bed flats to the upper two floors. The building would replace an existing single storey retail Class E building on the site.
- 1.3 The site is unallocated within the Kirklees Local Plan and is situated approx. 217m from the nearest local centre (LCB2 Batley Carr). The site is not within a conservation area and is not statutorily or locally listed. The building is also not within close proximity to any listed buildings.
- 1.4 Kufic and RR Planning has engaged from the outset with Kirklees Planning officers with pre application advice received on 30th November 2023 and the scope of a retail sequential assessment agreed with planning policy officers on 19th January 2024.

2.0 THE APPLICATION PROPOSAL

2.1 The existing building is a single storey brick built lock up retail unit with roller shuttered storage garage with a total floor space of 80sqm. It proposed to reconfigure and redevelop the property to provide a smaller yet more useable modern rectangular retail unit of 71sqm with a further two storeys above to provide two 2-bedroom flats above the retail unit. Both flats meet the national minimum floor space standards. The building will have a pitched roof and will be constructed of stone to the front and rear and brick to the side elevation with fibre cement roof tiles to match the adjoining building. The building adjoining to the west (left) is in the freehold of the applicant is a former public house now in use as a tuition centre. The dental practice and car park to the north (rear) of the application site is also in the freehold of the applicant. Four car parking spaces will be allocated to the development to the rear as well as some amenity space and secure lockable internal cycle parking provision.



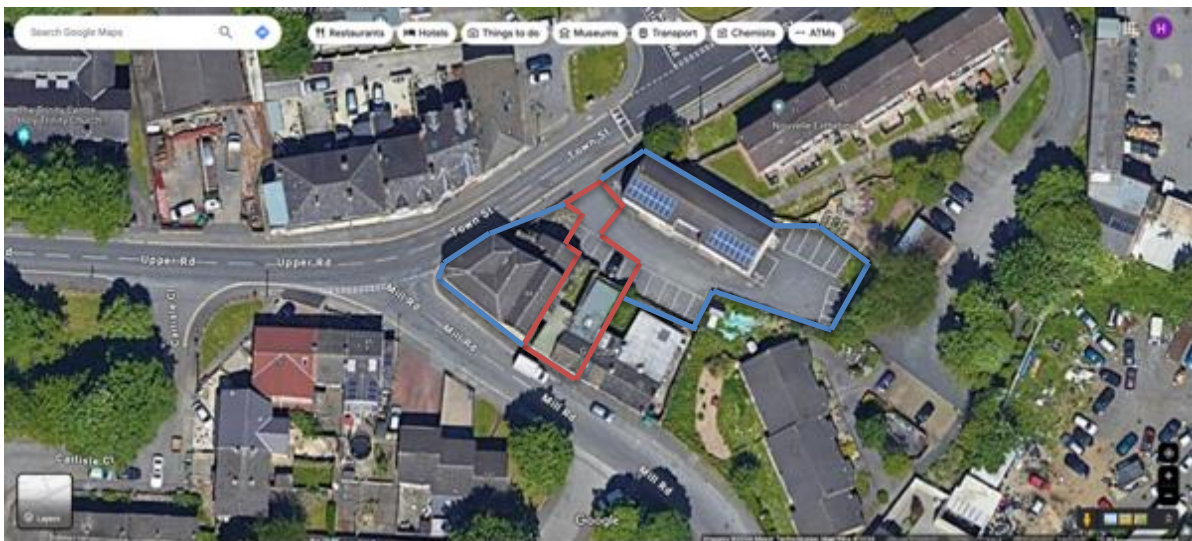
42 Mill Road – Proposed Elevations

2.2 The area in the immediate vicinity of the application site is distinctly mixed use. Directly opposite are brick-built terrace house whilst the area around the junction of

Town Street and Mill Road features commercial retail properties at ground floor level and residential above.



42 Mill Road



42 Mill Road – Application Site – Google Satellite Image



42 Mill Road – Google Street View Image

- 2.3 The subject property is a long-established shop retailing frozen and ready-made food since 1999 and it is understood that the existing occupier will continue to trade from the premises. The site has existed as a retail location for many decades and does not harm the vitality and viability of any existing centre. Indeed, the area in question has more shops than and services than the nearby designated Batley Carr Local Centre which has only five commercial units whereas here there is a dentist, three barbers/hair salons, a takeaway and café.
- 2.4 The retail unit serves the local area, and the proposal is to retain an existing unit which ordinarily most councils would seek to protect rather than remove. Living above the shop and making best use of urban land is fundamentally supported by the planning system as sustainable development for which there is a 'presumption in favour' of development.

3.0 PLANNING POLICY AND ASSESSMENT

- 3.1 It is of course the case that the Courts have determined that it is enough that a proposal accords with the Development Plan when considered as a whole. It is not necessary to accord with each and every policy contained within the Development Plan. Indeed, it is not at all unusual for development plan policies to pull in different directions.
- 3.2 Relevant to this proposal is the National Planning Policy Framework (NPPF) of 20th December 2023 and the adopted Kirklees Local Plan of 27 February 2019. The primary objective of the NPPF is to allow development that is sustainable to proceed, without delay. A presumption in favour of sustainable development is the basis for every plan and every decision. The NPPF sets out clearly what could make a proposed plan or development unsustainable. Paragraph 7 of the NPPF is clear – ‘The purpose of the planning system is to contribute to the achievement of sustainable development, including the provision of homes, commercial development, and supporting infrastructure in a sustainable manner’. The NPPF is a material consideration in planning decisions.

National Planning Policy Framework

- 3.3 Paragraph 11 of the NPPF sets out the foundation upon which planning proposals should be considered with presumption in favour of sustainable development. Local authorities are advised to approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.
- 3.4 Delivering a sufficient supply of homes is vital to the NPPF. It is important that a sufficient amount and variety of land can come forward where it is needed, that the needs of groups with specific housing requirements are addressed and that land with permission is developed without unnecessary delay. With regard to business and the economy the NPPF advises at Paragraph 81 that –

Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. The approach taken should allow each

area to build on its strengths, counter any weaknesses and address the challenges of the future.

3.5 The NPPF places an emphasis on being flexible enough to accommodate needs not anticipated in the plan and to allow for new and flexible working practices. Local authorities are advised that planning policies and decisions should recognise and address the specific locational requirements of different sectors.

3.6 Whereas the NPPF advises that local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan it should be noted that the existing long-established ground use is already a main town centre use that is located outside a defined centre. As you know, planning policy often pulls in different and sometimes contradictory directions. Whilst NPPF may require sequential assessments it also at the same time places equal weight on promoting healthy and safe communities which

–
*“promote social interaction, including opportunities for meetings between people who might not otherwise come into contact with each other – for example through **mixed-use developments, strong neighbourhood centres, street layouts that allow for easy pedestrian and cycle connections within and between neighbourhoods, and active street frontage**”.*

“To provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should:

- a) **plan positively for the provision and use of shared spaces, community facilities (such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments;***
- b) take into account and support the delivery of local strategies to improve health, social and cultural well-being for all sections of the community;*
- c) **guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community’s ability to meet its day-to-day needs;***
- d) **ensure that established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community;** and*
- e) ensure an integrated approach to considering the location of housing, economic uses and community facilities and services.”*

- 3.7 The duty placed upon the council is to be proactive and realistic in its expectations given that there is no net increase in retail provision.
- 3.8 As such the scope of the sequential retail assessment has been pre agreed with Kirklees planning policy Officer James Broadhead in accordance with the NPPF as follows –

As set out previously, in accordance with (Local Plan) Policy LP13, you will therefore need to do a sequential test as the application site is out of centre.

The parameters of the sequential test should be carried out in line with the comments set out in previous correspondence but given the scale of the floorspace proposed (60 sqm) it is considered reasonable to limit the sequential test to the nearby local centres of Batley Carr (LCB2), Halifax Road (LCB20) and Mount Pleasant (LCB33) defined in the Local Plan for units and land of similar scale. As highlighted in paragraph 92 of the NPPF (Dec 23), applicants and local authorities should demonstrate flexibility on issues such as format and scale.

Whilst at the time of the Council's occupancy survey of local centres in 2022 there were no vacant units recorded within the designated centres in the local area, this situation may have changed overtime.

- 3.9 The site is located approx. 217m walking distance from the nearest defined local centre which is Batley Carr Local Centre (LCB2). The application proposes a retail unit on the ground floor. As the size of the retail unit is below 200m a retail impact assessment is not required. On this basis a sequential retail assessment of the local centres of Batley Carr (LCB2), Halifax Road (LCB20) and Mount Pleasant (LCB33) as designated in the adopted Local Plan has been undertaken.

Adopted Kirklees Local Plan

- 3.10 The Kirklees Local Plan was adopted on 27 February 2019. Policy LP1 outlines a presumption in favour of sustainable development. Kirklees Local Plan Policy LP7 (Efficient and effective use of land and buildings) states that proposals should encourage the efficient use of previously developed land and encourage the reuse or adaptation of vacant and underused properties, which this development proposes. Policy LP7 also states that developments should achieve a net density of 35 dwellings per hectare, if appropriate. The net area of the application site is approximately 0.01ha. A development of 2 flats would represent a net density of 200 dwellings per hectare which comfortably exceeds the minimum expected net density of 35 dwellings per hectare.

3.11 As to design and visual amenity, Kirklees Local Plan policies LP1, LP2 and significantly LP24 all seek to achieve good quality, visually attractive, sustainable design to correspond with the scale of development in the local area, thus retaining a sense of local identity. Policy LP24 states –

proposals should promote good design by ensuring:

- a) the form, scale, layout and details of all development respects and enhances the character of the townscape, heritage assets and landscape;*
- b) they provide a high standard of amenity for future and neighbouring occupiers; including maintaining appropriate distances between buildings and the creation of development-free buffer zones between housing and employment uses incorporating means of screening where necessary;*
- c) extensions are subservient to the original building, are in keeping with the existing buildings in terms of scale, materials and details and minimise impact on residential amenity of future and neighbouring occupiers;*
- d) high levels of sustainability, to a degree proportionate to the proposal;*
- e) the risk of crime is minimised by enhanced security, and the promotion of well-defined routes, overlooked streets and places, high levels of activity, and well-designed security.*
- f) the needs of a range of different users are met, including disabled people, older people and families with small children to create accessible and inclusive places;*
- g) any new open space is accessible, safe, overlooked and strategically located within the site and well-integrated into wider green infrastructure networks;*
- h) development contributes towards enhancement of the natural environment, supports biodiversity and connects to and enhances ecological networks and green infrastructure.”*

3.12 Careful consideration has been given to the design quality of this proposed development in accordance with Local Plan policy LP24 (Design) and the design principles set out in the council’s Housebuilders Design Guide SPD. This includes sensitively respecting and enhancing local character, high standards of residential amenity, such as compliance with national space standards, integrating green infrastructure and accessible open space, walking and cycling and road connections, materials and detailing, and how the proposal in terms of energy efficiency contributes to the council’s ambition to have net zero carbon emissions by 2038. The proposed mixed-use scheme complements the existing urban mixed-use surrounds and is in a sustainable location close to a designated retail centre and well served by the local transport network. Dewsbury town centre is a 12-minute walk from the application site and a 7-minute journey by public transport at 15-minute intervals.

- 3.13 A pitched roof scheme with the use of stone and fibre cement roof tiles complements the existing palette of materials on Mill Road.
- 3.14 Residential amenity has also been taken into consideration. All habitable rooms have ample access to daylight/sunlight and there is no overlooking. Bedrooms are located to the front facing Mill Road and there is sufficient separation distance between residential dwellings across Mill Road. Open Plan kitchens are to the rear with sufficient separation distance to the dental practice. Please note, there are no residential occupiers to the rear.
- 3.15 Four car parking spaces are allocated for the scheme to the rear of the property within the existing car park where there are a total 20No. car parking spaces. 16 car parking spaces is adequate of the dental practice which has only seven surgeries and with consistent in out movements of patients. On street parking is also available to the front of the site on Mill Road.

4.0 SEQUENTIAL RETAIL ASSESSMENT

4.1 Policy LP13 of the local plan identifies the retail hierarchy of centres. Dewsbury is designated Principal Town Centre. Batley and Heckmondwike are defined town centres and Birstall is classed as a District Centre. Local Centres are also defined. The local plan definition of each centre is as follows –

Level	Role and Function
1. Principal Town Centre	<ul style="list-style-type: none">• Provide for the shopping needs (particularly for non-food goods) of residents across Kirklees.• The main focus in Kirklees for the provision of financial and professional services; offices, entertainment; sport, leisure, arts, culture and tourism facilities; further and higher education; and health services.
2. Town Centre	<ul style="list-style-type: none">• Provide for the shopping needs of residents across Kirklees mainly in the convenience (food) goods sector.• Be the focus for the local provision of financial services; offices; entertainment and leisure facilities; arts, culture and tourism facilities, further education; and health services.
3. District Centre	<ul style="list-style-type: none">• Provide a range of shopping for everyday needs and serving specialist markets.• Be the local focus for basic financial services, food and drink, entertainment, leisure and tourist facilities, and health services.
4. Local Centre	<ul style="list-style-type: none">• Provide for top-up shopping and local services particularly food and drink.

Kirklees Local Plan Extract – Hierarchy of Centres Definitions

4.2 As the proposed development is located out of centre in retail policy terms, it is necessary to demonstrate that there are no suitable, available and viable sequentially preferable sites that could accommodate the proposed development. It is, however, important at the outset to correctly interpret and apply the sequential test, taking into account case law and relevant appeal decisions. For example, as highlighted in the Dundee (March 2012) case, the Supreme Court ruled that “suitable” means “suitable for the development proposed by the applicant”, subject to the applicant having demonstrated reasonable flexibility in terms of scale and format – an approach endorsed by the Secretary of State in the Rushden (June 2014) and Exeter (June 2016) decisions. Ultimately, whether sufficient flexibility has been demonstrated is a matter of judgement, albeit the purpose of flexibility is not to require the application to be transformed into something significantly different – a view also reflected in the aforementioned decisions. Furthermore, nor is it the purpose of national and local planning policy to require a developer/retailer to compromise their “real world” proposal to the extent that it no longer meets their business requirement and, as a consequence, becomes unviable. Moreover, it is also clear that the requirement for flexibility in applying the sequential test also applies to Local Planning Authorities. The Rushden decision also confirms that there is no policy requirement to disaggregate elements of the proposed development onto smaller, sequentially preferable sites.

With regard to “availability”, whilst neither the NPPF nor the PPG provide any elaboration, the Rushden decision clearly points towards the requirement for a site to be currently available rather than have some uncertain prospect of becoming available at a future date. The three decisions referred to above, assist in demonstrating how the sequential test should be lawfully and properly applied.

- 4.3 As agreed with officer this is an existing retail property that is occupied and will continue to operate from the premises with the sale of frozen and pre-packed food. The business model is established since 1999 and there is no requirement to justify the retail use. The site is adjoined by a Class E tuition centre and a barber shop. The defined local centres of Batley Carr (LCB2), Halifax Road (LCB20) and Mount Pleasant (LCB33) have been assessed.

Batley Carr Local Centre (LCB2)

- 4.4 The application site is located 217m walking distance from Batley Carr Local Centre.



42 Mill Road and Batley Carr Local Centre – Kirklees Local Plan Proposals Map Extract

- 4.5 There are no available premises in Batley Carr Local Centre which comprises a convenience shop/post office, butchers’ shop, hot food takeaway, laundrette and plumbers merchant/DIY shop. We have also reviewed local property agents’ websites and confirm that there are no commercial properties available to let in Batley Carr



Batley Carr Local Centre

Halifax Road Local Centre (LCB20)

- 4.6 Halifax Road Local Centre is small local centre located approximately 0.6 miles or 15 minute's walk south west from the application site through Batley Carr estate. The local centre comprises 7 commercial units in a terrace fronting Halifax Road. These are a travel agent, 2 barber shops, a hot food takeaway, a convenience shop (ex Post Office) and a vacant unit.



Halifax Road Local Centre – Kirklees Local Plan Proposals Map Extract



Halifax Road Local Centre

4.7 there are no available units at Halifax Road Local Centre. There is one vacant lock up unit which the former Postmaster has confirmed has been empty for approximately 30-40 years and is not available to let.

Mount Pleasant Local Centre (LCB33)

4.8 Mount pleasant local centre is a larger local centre located 2 minutes' drive or 15-20 minute's uphill walk north of the application site. The local centre is easily accessed by public transport via a 2-minute walk and 5-minute bus journey at 15-minute intervals.



Mount Pleasant Local Centre – Kirklees Local Plan Proposals Map Extract





Mount Pleasant Local Centre

- 4.9 Mount Pleasant Local Centre is centred around the crossroads of Purlwell Lane, Oxford Street and Banks Street. There are many shops that serve the local catchment including four medium/large greengrocer/butchers' shops, a convenience shop, laundrette, travel agent, charity shop, clothing retailer, two barber shops, jeweller, bakery, and café.
- 4.10 All units are occupied and there are no available units to let.

5.0 CONCLUSIONS

- 5.1 The proposal has been evaluated with regard to its conformity with NPPF guidance and a bespoke sequential assessment has been undertaken, as agreed with the LPA. There are no available sites being actively marketed by commercial agents in the areas of search. Indeed, there is only one vacant unit which has remained vacant for 30-40 years.
- 5.2 The subject proposal does not detrimentally impact existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal. The proposed development will retain a long-established commercial property albeit in a modern format with residential units above. In light of the above, we consider the proposal passes the sequential test and as such the proposals will not have any adverse impact on the vitality or viability of the identified centres. The redevelopment of the the site is consistent with guidance set out in the NPPF and Local Plan Policy LP13 and as such planning permission should be granted. The principle of the development is well established and there is no impact on visual or residential amenity or highway safety.