

**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:	2024/62/92109/E
Site Address:	Mark Betts Hair And Beauty, 43, Commercial Street, Batley, WF17 5EP
Description:	Change of use of ground floor from salon (Class E) to restaurant (Class E(b)), installation of rear external extraction flue and formation of bin storage area to rear
Recommending Officer:	Elenya Jackson

DECISION – Full Conditional Permission

I hereby authorise the approval of this application for the reasons set out in the officer's report and recommendation annexed below in respect of the above matter.

Kirsty Nicholls

AUTHORISED OFFICER

Date: 22-NOV-2024

Officer Report.

Reference: 2024/92109

Location: Mark Betts Hair And Beauty, 43, Commercial Street, Batley, WF17 5EP

Proposal: Change of use of ground floor from salon (Class E) to restaurant (Class E(b)), installation of rear external extraction flue and formation of bin storage area to rear

Site Description.

43, Commercial Street, Batley, is a two storey property which has a previous use as a salon.

The property is the end of terrace row of commercial buildings in the centre of Commercial Street.

There is a small alleyway between the application site and no 47 Commercial Street, which provides access to Wards Hill at the rear of the site.

The site is set back from the street scene via a widened pavement which creates lay-by parking and a pedestrian route.

The design of the unit is not identical to units within the street scene however, the immediate building group is mixed residential/commercial with residential properties across from the site.

Description of Proposal.

Planning permission is sought for the change of use of 43, Commercial Street, Batley, to a restaurant from a hair and beauty salon.

There is no increase to the footprint of the property proposed as part of the development. However, the proposal would include an extraction flue and formation of bin storage.

No advertisements have been included as these would require a separate application.

The proposed hours of operation are:

10:00-02:00 Monday to Friday

10:00-02:00 Saturday/Sunday and Bank Holidays.

History of Negotiations/Amendments Received.

No further details have been requested by officers.

Relevant Planning History.

No relevant planning permission

Representations.

We are currently undertaking statutory publicity requirements, as set out at Table 1 in the Kirklees Development Management Charter. As such, we have publicised this application via neighbour notification letters which expired on 17th July 2024. Two representations were received, both in objection. The following comments were raised:

- Parking
- Variety of business in town centre
- Concerns regarding the proposals impact on the Batley Town Centre Blue Print and Levelling Up Fund award

Consultations.

KC Environmental Health – No objections however requested conditions relating to implementation of a kitchen extract scheme.

KC Highways Development Management – Informal consultation conducted. No concerns raised due to the site having an existing commercial use.

Policy/Legislation.

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 for Kirklees is the Local Plan (adopted 27th February 2019).

The application site is located in a town centre boundary.

Kirklees Local Plan (LP):

- LP1 – Achieving Sustainable Development
- LP2 – Place Shaping
- LP3 – Location of New Development
- LP13 – Town Centre Uses
- LP 15 – Residential use in town centres

- LP16 – Food and Drink and the Evening Economy
- LP20 – Sustainable Travel
- LP21 – Highway Safety
- LP22 – Parking Provision
- LP24 – Design
- LP25 – Advertisements and Shop Fronts
- LP44 – Waste management
- LP47 – Healthy, Active and Safe Lifestyles
- LP51 – Protection and Improvement of Local Air Quality
- LP52 – Protection and Improvement of Environmental Quality

Supplementary Planning Documents (SPD):

- Kirklees Waste Management Design Guide for New Developments (2020)
- Highways Design Guide (2019)

National Policies and Guidance:

National policies and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published December 2023, together with Circulars, Parliamentary Statements and associated technical guidance. The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications.

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- Chapter 2 – Achieving Sustainable Development
- Chapter 4 – Decision-Making
- Chapter 7 – Ensuring the Vitality of Town Centres
- Chapter 8 – Promoting Healthy and Safe Communities
- Chapter 9 – Promoting Sustainable Transport
- Chapter 12 – Achieving Well-Designed and Beautiful Places
- Chapter 14 – Meeting the Challenge of Climate Change, Coastal Change and Flooding
- Chapter 15 – Conserving and Enhancing the Natural Environment
- Chapter 16 – Conserving and Enhancing the Historic Environment

Assessment.

The following matters are considered in the assessment below:-

- 1) Principle of development

- 1) Impact on local economy and vitality and viability
- 2) Impact on visual amenity (including heritage considerations)
- 3) Impact on residential amenity
- 4) Impact on highway safety
- 5) Other Matters
- 6) Representations
- 7) Conclusion

1) Principle of Development

Chapter 2 of the NPPF states that: *“Planning policies and decisions should play an active role in guiding development towards sustainable solutions...”*

Chapter 2 of the NPPF goes on to further state that objectives should: *“support strong, vibrant and healthy communities, providing the supply of housing required to meet the needs of present and future generations; and by fostering a well-designed and safe built environment...”*

In line with the NPPF, Policy 1 of the Kirklees Local Plan declares that: *“...the council will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF.”*

Policy LP1 goes further and states: *“The council will always work pro-actively with applicants jointly to find solutions which mean that proposals can be approved wherever possible, and to secure development that improves the economic, social and environmental conditions in the area.”* Policy LP2 of the Kirklees Local Plan sets out that all development proposals should seek to build on the strengths, opportunities and help address challenges identified in the Local Plan.

Within the NPPF, it will be assessed having regard to the advice to drive sustainable economic development and to support existing business sectors in “Core planning principles” and “Building a strong competitive economy” (Chapter 6) and the promotion of the vitality and viability of local centres as set out in “Ensuring the vitality of town centres” (Chapter 7).

Also of relevance is the advice in Chapter 8 of the NPPF, ‘Promoting Healthy and Safe Communities’. This Chapter states that planning decisions should ensure that crime and disorder, or the fear of crime, do not undermine quality of life or community cohesion. Policy LP47j of the Kirklees Local Plan also states that healthy, active and safe lifestyles will be enabled by working with partners to manage the location of hot food take-aways particularly in areas of poor health.

Turning to the Local Plan, policy LP13 states, in brief, that main town centre uses which are appropriate in scale, help to retain an existing centre's market share, and enhance the experience of those visiting the centre and the

businesses which operate in that centre will be supported. This policy also requires that proposals that have a significant adverse impact on the vitality and viability of a centre or compromise the role and function of a centre will not be supported.

It is considered that the proposal would utilise an existing unit to provide a town centre use. It is considered that further assessments would be required relating to the impact on vitality and viability, visual, residential and highway safety

1) Impact on Local Economy and Vitality and Viability of Town Centres

Chapter 7 of the NPPF relates to the ensuring the vitality of town centres. Paragraph 90 of the NPPF outlines that planning decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation.

Policy LP13 of the Kirklees Local Plan is consistent with Government guidance contained within the NPPF. Policy LP13 states that within Kirklees, main town centre uses shall be located within defined centres (principal centres, town centres, district centres, and local centres), as shown on the Policies and Town Centre Maps, and as detailed in the shopping centre hierarchy and then in accordance with the sequential test. Policy LP13 also states that proposals which have a significant adverse impact on the vitality and viability of a centre, or compromise the role and function of a centre, will not be supported.

In addition, Policy LP13 states that centres shall provide a mix of uses to serve the local community, businesses and visitors to the district. The uses shall complement each another whilst retaining a strong retail core. Centres in Kirklees shall aim to provide a range of uses to support the daytime and evening economy.

The existing unit was a hair and beauty saloon which is a class E use as per the Use Class Order. The conversion of the property to a restaurant would be within the same class E use and could be conducted without planning permission.

Officers have reviewed the details provided in support of the application and note the application form states the use of the site is for 'the consumption of food mainly on the premises', which is quoted in the Order, and the description at the time of submission was 'restaurant'. Therefore, the application is being assessed as a restaurant as opposed to a hot food takeaway which would have a sui use class.

As the proposal would be retaining a class E use, it is considered that this change could be conducted without planning permission and therefore to refuse the application would be unreasonable.

It is therefore concluded that, as the change of use from a hair and beauty salon to a restaurant, for 'the consumption of food mainly on the premises', would be under the same use class (E), the proposed change of use is permitted development. It should be noted that this use only covers the consumption of food and drink on the premises and not the sale of hot food off the premises.

2) Impact on Visual Amenity

The NPPF offers guidance relating to design in chapter 12 (achieving well designed places) whereby paragraph 126 provides a principal consideration concerning design which states: *"The creation of high-quality 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."*

Kirklees Local Plan policies LP1, LP2 and significantly LP24 all also 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.

LP24 states that 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..."*

No advertisements have been indicated and would be assessed through a separate application for advertisement consent. The proposed flue and bin storage would not be prominent from the main pedestrianised area and would have a limited impact on the character of the surrounding area.

Therefore, subject to conditions ensuring no alterations are made to the existing shop front, the proposal is considered acceptable in terms of impact to the character of the area and would accord with LP24 of the Kirklees local plan in terms of visual amenity.

3) Impact on Residential Amenity

Policy LP24 of the Kirklees Local Plan and policies within Chapter 12 of the National Planning Policy Framework seeks to ensure development has an acceptable impact upon the amenity of neighbouring occupiers.

Chapter 15 of the NPPF, 'Conserving and Enhancing the Natural Environment' is also of relevance to residential amenity. Paragraph 180 (e) sets out that, planning policies and decisions should contribute to and enhance the natural and local environment by *“preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information...”*

In addition to this, Policy LP52 of the Kirklees Local Plan states that proposals which have the potential to increase pollution from noise, vibration, light, dust, odour and other forms of pollution must be accompanied by evidence to show the impacts have been evaluated and measures have been incorporated to prevent or reduce the pollution, so as to ensure it does not reduce the quality of life and well-being of people to an unacceptable level or have unacceptable impacts on the environment.

With regard to the proposed change of use, the site is located in a mixed use commercial and residential area as it is within a local centre. The properties adjoining the site do not feature first floor accommodation.

KC Environmental Health have been consulted on the application and have not raised any concerns regarding the residential amenity of neighbouring residents. A condition has been requested which requires the proposed extract system to be installed prior to commencement of cooking on site. It is considered this is reasonable to avoid disturbance to neighbouring properties and ensure the proposal is implemented inline with the details approved by the local planning authority.

There are no alterations to the building which would result in any concerns regarding overlooking, overshadowing or loss of light.

There are no properties at first floor level to the building.

It is considered that the proposed hours of operation are to be from 10am until 2am. Officers have reviewed neighbouring premises and the wider street scene and understand the latest any of the business' are open until is 1am, with the exception of the casino. Officers acknowledge that there are no adjoining residential dwellings and the hours proposed are considered acceptable in this instance. No objections have been raised by Environmental Health and any concerns with the additional hour would be controlled by additional legislative mechanisms outside the planning system. To request any adjustment to the hours of opening would be unreasonable as no objections have been raised from any consultees specialising in this field.

It is considered that, subject to conditions, the change of use would appropriately comply with the aims of Policies LP16(b), LP24 and LP52 of the Kirklees Local Plan and Chapters 12 and 15 of the NPPF, causing no detriment to the buildings located in close proximity, most importantly with an application of this nature, causing no detriment in terms of noise disturbance.

4) Impact on Highway Safety

The NPPF states that: *“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”*

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 is also relevant, seeking to retain acceptable levels of off-street parking.

The application site is in Batley Town Centre.

There has not been a highway statement provided to support the application; however, discussions have been held with KC Highways on 13/11/2024 and it is considered that there would be sufficient on street parking in the vicinity to negate the need for any conditions relating to highway safety.

Therefore, subject to conditions, the proposal is considered to comply with Policies LP16 (d and f), LP21 and LP22 of the Kirklees Local Plan.

5) Other Matters

Waste Management:

The site is being converted from a salon to a restaurant. Therefore, it is considered necessary to impose a condition on the application relating to the collection of waste in order to ensure the proposal would accord with LP44 of the Kirklees Local Plan.

Health and safety

As the application relates to the production and consumption of food, KC Environmental Health have requested two footnotes are added to the application relating to food safety, hygiene and sanitary accommodation. In the event that planning permission is approved, appropriate footnotes are recommended to be attached.

6) Representations

- Parking

Officer response: KC Highways have been consulted and not raised any concerns. It is considered that there are no parking restrictions and parking provision in the wider vicinity of the site.

- Variety of business in town centre

Officer response: The proposal would be retaining a class E use and therefore the change of use could be conducted without planning permission. If the site no longer operates as a restaurant, a further change of use may be required which would be assessed on its individual merits at the time of submission.

- Concerns regarding the proposals impact on the Batley Town Centre Blue Print and Levelling Up Fund award

Officer response: Noted, however the proposal would be retaining a class E use and therefore the change of use could be conducted without planning permission.

Conclusions

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 has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development would constitute sustainable development and is therefore recommended for approval.

Recommendation: Conditional Full Permission

Decision Authorisation – Delegated Powers

Application Number: 2024/92109

Officer Recommendation: Conditional Full Permission

Conditions and Reasons:

1. The development hereby permitted shall be begun within three years of the date of this permission.

Reason: Pursuant to the requirements of Section 91 of the Town and Country Planning Act 1990.

1. The development hereby permitted shall be carried out in complete accordance with the plans and specifications schedule listed in this decision notice, except as may be specified in the conditions attached to this permission, which shall in all cases take precedence.

Reason: For the avoidance of doubt as to what is being permitted and so as to ensure the satisfactory appearance of the development on completion, and to accord with Policies LP1, LP2, LP3, LP13, LP16,

LP20, LP21, LP22, LP24, LP35, LP47, LP51 of the Kirklees Local Plan and LP52 and Chapters 2, 4, 7, 8, 9, 12, 14, 15 and 16 of the National Planning Policy Framework.

2. Notwithstanding the submitted details, no activities shall be carried out on the premises, including deliveries to or dispatches from the premises, outside the hours of 10:00 and 02:00 Monday to Friday and 10am-2am Saturdays and Sundays (including bank holidays)
Reason: To ensure that the proposed development does not cause harmful noise pollution to neighbouring premises in the interest of amenity and to accord with Policies LP16(b) and LP52 of the Kirklees Local Plan and Chapters 12 and 15 of the National Planning Policy Framework.
3. Within one month from the date of the development operating, details of collection of wastes from the premises shall be submitted to and approved in writing by the Local Planning Authority in the form of copies of Controlled Waste Transfer Notes. These details shall be thereafter retained for the lifetime of the development.
Reason: To ensure that the development has adequate facilities for the separation and storage of wastes and to ensure that they can be collected without causing an obstruction to the public highway, so as to accord with the aims of Policies LP44, LP21 and LP24(d)(vi) of the Kirklees Local Plan.
4. Notwithstanding the approved plans there are to be no alterations to the existing shop front of 43, Commercial Street, Batley, WF17 5EP without prior consent from the Local Planning Authority.
Reason: To ensure the proposed development does not cause harmful to the character of the street scene or the conservation area in the interest of visual amenity, to comply with the aims and objectives of Policies LP24 and LP35 of the Kirklees Local Plan and Chapters 12 and 15 of the National Planning Policy Framework.
5. Before any food cooking commences, the kitchen extract system as specified in RP Acoustics Limited, ref: Our Reference: NIA&ORA/1300/24/365/v1.0/43 Commercial Street, Batley, dated the 2nd of September 2024 and the plan by 363 Architecture, ref: PE-02, dated July 2024, shall be installed. The kitchen extract system shall operate at all times during the preparation and cooking of food and be maintained in accordance with the manufacturer's instructions and as specified in the report.
Reason: To ensure the proposed development does not cause harmful odour pollution within either a public area or at neighbouring premises in the interest of amenity, to comply with the aims and objectives of Policies LP24 and LP52 of the Kirklees Local Plan and Chapters 12 and 15 of the National Planning Policy Framework

Note:

Kirklees Council has powers under Section 60 of the Control of Pollution Act 1974 to control noise from construction sites and may serve a notice imposing requirements on the way in which construction works are to be carried out. It has additional powers under Sections 80 of the Environmental Protection Act 1990 to prevent statutory nuisance including noise, dust, smoke and artificial light and must serve an abatement notice when it is satisfied that a statutory nuisance exists or is likely to occur or recur. Failure to comply with a notice served using the above-mentioned legislation would be an offence for which the maximum fine on summary conviction is unlimited.

Note: It is advised that the occupants sign up to the Environment Agency's Flood alerts using the link below: What to do if you get a flood alert - GOV.UK (flood-warning-information.service.gov.uk)

Note: The applicant is reminded that Kirklees Council has powers under Sections 80 of the Environmental Protection Act 1990 to prevent statutory nuisance including odours and must serve an abatement notice when it is satisfied that a statutory nuisance exists or is likely to occur or recur. Failure to comply with a notice served using the above-mentioned legislation would be an offence for which the maximum fine on summary conviction is unlimited.

NOTE:

It is recommended that prior to development commencing the applicant should contact the Food Safety Team of Environmental Services to arrange an advice visit to discuss food safety and hygiene requirements including an appropriate layout. The Food Safety team can be contacted on 01484 22100 (ask for food safety) or by email at food.safety@kirklees.gov.uk.

NOTE:

All workplaces where staff are employed need sanitary accommodation and all premises which are open to the public for entertainment and consumption of food and drink require toilets that are accessible to the public. If applicants need further advice on number and facilities, then please contact the Health and Safety Team on 01484 221000 (ask for health and safety) or by email at healthandsafety@kirklees.gov.uk

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Location Plan	LP-01		19/09/2024
Site Plan	BP-01		19/09/2024
Existing South Elevations	EE-01		19/09/2024
Existing Floor Plans	EP-01		19/09/2024

Plan Type	Reference	Version	Date Received
Existing Floor Plans	EE-02		19/09/2024
Proposed Elevations	PE-02		19/09/2024
Proposed South Elevation	PE-01		19/09/2024
Proposed Floor Plans	PP-01		19/09/2024
Waste Management Plan			19/09/2024
Noise impact and Odour report			19/09/2024
Climate Change Statement			19/09/2024

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 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.

No further information was required.