

**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.	2024/CL/92286/E
Site Address	5-9, High Road, Earlsheaton, WF12 8AZ
Description	Prior notification for change of use from commercial/business/service to 6 flats
Recommending Officer	Nicole Helliwell

DECISION - PRIOR APPROVAL GRANTED

**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.**

Kevin Walton

AUTHORISED OFFICER

Date:09-Oct-2024

Officer Report

Reference No. 2024/CLASS MA/92286/E

Site Address: 5-9, High Road, Earlsheaton, WF12 8AZ

Proposal: Prior notification for change of use from commercial/business/service to 6 flats

Site Description

The application relates to 5-9 High Road, a three-storey detached property located in Earlsheaton. The building is constructed in stone and incorporates a hipped roof finished in slate. The wider area is characterised by residential properties of similar materials and architectural styles. The site is not within a conservation area, nor are there any listed buildings or Public Rights of Way (PROW) within close proximity. The building's current external condition appears neglected with some openings consisting of unglazed timber frames windows, sheet boarding, metal panels or exposed brick/blockwork. A significant degree of external work would be required to achieve the elevational appearance as shown on the submitted plans.

Description of Proposal

The proposal seeks to confirm that the change of use from a commercial building (Class E) to six flats (Class C3) is permitted development under Class MA of the General Permitted Development Order (2015) (as amended). The proposal would convert the existing building into six one bedroomed flats across three stories. The plans indicate alterations to external fenestration and internal re-configuration. It should be noted that Class MA does not permit any building operations necessary to convert the building and such external work is likely to require full planning permission from the Local Planning Authority.

The application form and block plan also indicate a number of proposed parking spaces to the rear of the building although it is unclear how the spaces will be formed on the sloping ground without significant engineering operations to level and/or surface the land. Such engineering operations would be outwith of the scope of this application and likely to require planning permission from the Local Planning Authority.

It is considered necessary to add a footnote informing the development of the scope of development under Part 3, Class MA.

History of Negotiations

Amendments were sought during the course of the application. Concerns were raised regarding the internal floor space of the two bedroomed flats, given that they would fail to accord with the nationally described space standards. Revised drawings were received which were considered acceptable in terms of occupier amenity.

Relevant Planning History

- **2013/90365:** Extension to time limit to previous permission 2009/92593 for conversion of existing derelict building to 6 apartments. [Planning application details | Kirklees Council](#) – Extension of Time Limit – Grant
- **2012/92116:** Discharge of conditions 3, 4, 9, 10 and 11 following a grant of planning permission 2009/92593 conversion of existing 3 storey derelict building into 6 No. apartments. [Planning application details | Kirklees Council](#) – Withdrawn
- **2009/92593:** Conversion of existing three storey derelict building into 6 no. apartments. [Planning application details | Kirklees Council](#) – Conditional Full Permission
- **2004/90959:** Conversion of vacant ground floor premises to flat. [Planning application details | Kirklees Council](#) – Conditional Full Permission
- **2003/93834:** Change of use of ground floor to retail outlet for tack and equipment for horse and rider and associated parking. [Planning application details | Kirklees Council](#) – Refused
- **92/00033:** Change of use of commercial building to 2 dwelling units. [Planning application details | Kirklees Council](#) – Conditional Full Permission
- **91/02410:** Conversion of second floor offices and warehouse building to form 2 one-bedroomed flats. [Planning application details | Kirklees Council](#) – Conditional Full Permission
- **88/00086:** Change of use of land to form car park. [Planning application details | Kirklees Council](#) – Granted Conditionally

Representations

The application was advertised by neighbour notification letters, which expired on 25th September 2024. As a result of the above publicity, no representations have been received.

Procedural Matters

The above described proposal constitutes development as defined within Section 55 of the Town and Country Planning Act 1990. The General Permitted Development Order 2015 Schedule 2 Part 3 Class MA (As inserted 2021) permits the following development:

'MA. Development consisting of a change of use of a building and any land within its curtilage from a use falling within Class E (commercial, business and service) of Schedule 2 to the Use Classes Order to a use falling within Class C3 (dwellinghouses) of Schedule 1 to that Order.'

The proposal (other than the alterations) is considered to be covered within this Class, and is thus authorised subject to the restrictions, conditions and prior notification procedure outlined in Paragraphs MA.1, MA.2 and MA.3.

Limitations for Part 3, Class MA.1 Development

Development is not permitted:-

<p>(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</p>	<p>Sub-paragraph (a) has been omitted.</p>
<p>(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;</p>	<p>Pass: It is unclear from the planning history whether the building benefits from a use within Class E of Schedule 2 of the Use Classes Order 1987 (as amended). The applicant has not sought any confirmation via a Certificate of Lawful Development application and neither has any evidence been provided within this application to satisfy the Local Planning Authority the building has an established Class E use. While the Local Planning Authority is able to refuse an application for prior approval where the developer has not provided sufficient information, equally the Local Planning Authority can only refuse if it opines conditions, limitations cannot be met. In this instance and given the absence of evidence to demonstrate the 2013 permission to convert the building to residential had lawfully change the use from commercial to residential or any evidence to suggest any commercial use was within the relevant use class, it is considered necessary to apply a footnote to advise that the grant of prior approval, if granted, does not provide any legal confirmation that permitted development rights apply where any development undertaken does not accord with the overarching description of development.</p>

<p>(c) The cumulative floor space of the existing building changing use under Class MA exceeds 1500 square metres;</p>	<p>Sub-paragraph (c) has been omitted.</p>
<p>(d) if land covered by, or within the curtilage of, the building— (i)is or forms part of a site of special scientific interest; (ii)is or forms part of a listed building or land within its curtilage; (iii)is or forms part of a scheduled monument or land within its curtilage; (iv)is or forms part of a safety hazard area; or (v)is or forms part of a military explosives storage area;</p>	<p>Pass: The land covered by, or within the curtilage of, the building does not all within any of the categories labelled from i to v.</p>
<p>(e) if the building is within— (i)an area of outstanding natural beauty; (ii)an area specified by the Secretary of State for the purposes of section 41(3) of the Wildlife and Countryside Act 1981(3); (iii)the Broads; (iv)a National Park; or (v)a World Heritage Site;</p>	<p>Pass: The building is not in any category in Paragraph (e).</p>
<p>(f) if the site is occupied under an agricultural tenancy, unless the express consent of both the landlord and the tenant has been obtained;</p>	<p>Pass: The site is not occupied under any agricultural tenancy.</p>
<p>(g) before 1 August 2022, if— (i)the proposed development is of a description falling within Class O of this Part as that Class had effect immediately before 1st August 2021; and (ii)the development would not have been permitted under Class O immediately before 1st August 2021 by virtue of the operation of a direction under article 4(1) of this Order which has not since been cancelled in accordance with the provisions of Schedule 3.</p>	<p>Pass: The building is not within any land affected by an Article 4 Direction.</p>

Paragraph MA.2 outlines a set of 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 on the intended occupiers of the development;
- (e) where— (i)the building is located in a conservation area, and (ii)the development involves a 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 considers 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.

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 proposal seeks prior notification for the change of use of an existing commercial building to six one bedroom apartments, which would intensify the domestic use on site. Whilst one off road parking would usually be required per dwelling of this type and size, given its sustainable town centre location within close proximity to transport infrastructure, it is considered acceptable in this instance. Moreover, on-street parking is not restricted or likely to result in significant or severe disruption to highways users.

The provision of external waste storage is not provided on the plans and neither is there any indication of internal provision to store bins. The footway along the frontage of the property also appears relatively narrow to enable the storage of waste bins on the footway and as such further details would be required to ensure waste bin storage can be satisfactorily be provided.

Contamination Risks

The site is not located within an area of potentially contaminated land and therefore, there are minimal concerns although it is in close proximity to potentially contaminated land and historic landfill. As such it is recommended to impose a condition relating to unexpected contamination.

Flooding Risks

The site does not fall within a flood risk zone and there are no known flood risks associated with the site.

Noise Impacts

MA.2(2)(d) requires the LPA to assess impacts of noise from commercial premises on the intended occupiers of the development. The building is a detached property, located off a classified C Road, within a predominately residential area. Therefore, it is considered that the proposal would not receive a significant level of noise disturbance from any commercial premises which would be detrimental to occupiers.

Conservation Area

MA.2(2)(e) requires the LPA to consider the heritage impacts of the development 'where (i)the building is located in a conservation area, and (ii)the development involves a 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.' The site is not located within a conservation area.

Provision of Natural Light

MA.2(2)(f) requires the provision of adequate natural light to all habitable rooms of the dwellinghouse. The submitted plans confirm that the apartments would benefit from a number of windows to the north, east, west and south facing elevations which would serve all habitable rooms. Therefore, it is considered that the property would receive adequate natural light and as such, would be acceptable with regard to MA.2(2)(f).

Commercial Impacts

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. Furthermore, the

proposal does not result in the loss of a nursery or health care centre and would therefore accord with MA.2(2)(h).

Fire Risk

MA.2(2)(i) states that where the development meets the fire risk condition, the fire safety impacts on the intended occupants of the building. The development is for six apartments which would not exceed the height of the building as outlined within article 9A of the General Management Procedure Order 2015. Therefore, the proposal would 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 37 sq. metres or does not meet nationally described space standard issued by the Department for Communities and Local Government on 27th March 2015.

The proposal has been considered against the Government's Space Standards for dwellings which suggest that a single-storey, one bedroom dwelling should have an internal floor area of 39m² (or 37m² where it has a shower room instead of a bathroom) or 50m² where two persons occupy the dwellinghouse.

The proposed floor plans demonstrate that the six flats would have an internal floor space of approximately 57sqm (Flat 1), 55 sqm (Flat 2), 56sqm (Flat 3), 55sqm (Flat 4), 55sqm (Flat 5) and 55sqm (Flat 6) which would be acceptable. For these reasons, it is considered that the proposal would adequately meet basic lifestyle needs and provide a high standard of amenity for future occupiers.

Representations

No representations were received following the statutory publicity.

Conclusion

The application has been submitted with sufficient information to allow the Local Authority to assess the above relevant impacts. The information provided is considered to be acceptable to the degree prior approval can be granted subject to conditions and footnote informing the developer of the application of permitted development rights relating to previous use and operational development.

Recommendation: Details Approved

Decision Authorisation – Delegated Powers

Application Number: 2024/92286

Officer Recommendation: Approve Details

Prior approval is granted subject to conditions set out in sub-paragraphs MA.2(5) & (6) and the following condition:-

1. No dwelling should be occupied until details of off-street waste bin storage have been submitted to and approved by the Local Planning Authority. No dwelling shall be occupied until the approved details have been fully implemented and made available to the occupiers of the dwellings. The waste bin storage area shall be thereafter retained and be made available to the occupiers of the dwellings.

Reason: In the interest of highway safety and to ensure adequate provision is made for the storage of waste bins in accordance with National Planning Policy Framework Chapter 9 and Kirklees Local Plan Policy LP21

2. In the event that contamination, or the presence of coal not previously identified by the developer prior to the grant of this prior approval is encountered during the development, all works in the affected area (except for site investigation works) shall cease immediately and the Local Planning Authority shall be notified in writing within 2 working

days. Works in the affected area shall not recommence until either (a) a Remediation Strategy by a suitably competent person has been submitted to and approved in writing by the Local Planning Authority or (b) the Local Planning Authority has confirmed in writing that remediation measures are not required. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures. Thereafter remediation of the site shall be carried out and completed in accordance with the approved Remediation Strategy.

Following completion of any measures identified in the approved Remediation Strategy a Verification Report shall be submitted to the Local Planning Authority. No part of the site shall be brought into use until such time as that part of the site has been remediated in accordance with the approved Remediation Strategy and a Verification Report in respect of those works has been approved in writing by the Local Planning Authority.

Reason: To ensure the safe occupation of the site in accordance with Policy LP53 of the Kirklees Local Plan and paragraph nos. 183 and 184 of the National Planning Policy Framework.

Plans and specifications schedule: -

Plan Type	Reference	Revision	Date Received
Location Plan	2024-5HR-01	-	15/08/2024
Existing and Proposed Plans	2024-5HR-02	A	09/10/2024
Existing and Proposed Plans	2024-5HR-02	-	15/08/2024

NOTE: The grant of prior approval under the provisions of Class MA, Part 3, paragraph W of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) does not convey any planning permission that may be required for any external works that materially affect the external appearance of the building nor any engineering operations to form access or hardsurfaces as shown on plans listed above.

NOTE: Article 3(1) and Class MA, Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) provides a granted of planning permission for development consisting of a change of use of a building and any land within its curtilage from a use falling within Class E of Schedule 2 to the Use Classes Order to a use falling within Class C3 only. The grant of prior approval in no way confirms the existing use of the building lawfully falls into Class E of Schedule 2 to the Use Classes Order. The developer is advised to seek formal confirmation of

compliance with the description of development as described in Class MA prior to commencing works to change the use of the building pursuant to Class MA.

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. In this instance, negotiations led to the amendment of plan to ensure compliance with space standards. However, the applicant was also advised to provide further information relating to the existing lawful use of the building but declined to do so.

Report Dated: 09/10/2024