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/92298/E**
Site Address	**3-5, Westgate, WF16 0HE**
Description	**Prior notification for change of use from commercial/business/service to two flats**
Recommending Officer	**Elenya Jackson**

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.

East Team

AUTHORISED OFFICER

Date:07-Oct-2024

Officer Report

Reference No. 2024/92298

Site Address: 3-5, Westgate, WF16 0HE

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

Site Description

The application relates to 3-5, Westgate, WF16 0HE which is a three storey commercial property. The property was formerly occupied by Halifax Bank. The building is constructed in stone with large glass windows at street level. The site is not within a conservation area.

Description of Proposal

The proposal seeks to confirm that the change of use from a commercial building (Class E) to two dwellings (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 two flats; a one bedroomed flat and a two bedroom flat. The ground floor would be retained as a commercial use.

History of Negotiations

No amendments or additional plans have been sought or received during the course of the application.

Relevant Planning History

2012/92007: Erection of illuminated fascia and projecting sign and non illuminated ATM collar. Granted

No other relevant history.

Representations

The application was advertised by neighbour notification letters, which expired on 20th September 2024. As a result of the above publicity, no representation has 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.

<u>Limitations for Part 3, Class MA.1 Development</u>

Development is not permitted:-

(a) unless the building has been vacant for a continuous period of at least 3 months immediately prior to	Sub-paragraph (a) has been omitted.

the date of the application for prior approval	
(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;	**Pass:** The use of the building has been Class E at least over the last two year period.
(c) The cumulative floor space of the existing building changing use under Class MA exceeds 1500 square metres;	Sub-paragraph (c) has been omitted.
(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 land covered by, or within the curtilage of, the building does not all within any of the categories labelled from i to v.
(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 site is not occupied under any agricultural tenancy.
(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	**Pass:** The building is not within any land affected by an Article 4 Direction.

Order which has not since been cancelled in accordance with the provisions of Schedule 3.	

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 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 two 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, with a further single visitor parking space, given its sustainable town centre location within close proximity to transport infrastructure, it is considered acceptable in this instance.

Where the applicant proposes bin storage area has not been provided on the plans; This is an existing section of land to the rear of the unit which the bins are stored in.

If available to be used the occupiers of the dwelling, the bins can be stored in an acceptable location. However, it is not known whether the owner/occupiers of the proposed dwellings would have legal access to these areas . As such it is considered a condition for details of bin storage would be required.

Contamination Risks

The site is not located within an area of potentially contaminated land and therefore there are minimal concerns.

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 surrounded by commercial properties. The building would be altered to residential use at first floor and basement level. The planning statement submitted does not confirm if the applicant is intending on using a noise insulation and ventilation solution.

Therefore, the level of proposed noise disturbance from commercial premises which would be detrimental to occupiers is unknown. Therefore, a condition would be required to be imposed to ensure suitable noise insulation measures are installed and are carried out to an acceptable standard.

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 proposed plans demonstrate that there would be no windows serving the bedroom of the basement flat. The window to the basement living and kitchen area is also set at a low level surrounded by two storey extension either side and a high boundary wall and detached

two storey building in close proximity to the south. Given the low level of the window, length of the living room it is intended to serve and surrounding structures, it is considered insufficient natural light would penetrate the entirety of the living area and kitchen.

Therefore, it is considered that the property would not receive adequate natural light and as such, would not 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 two 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 one storey one bedroom

dwelling should have an internal floor area of 37m2 and a two bedroom dwelling should have a floor space of 61m2.

The proposed floor plans demonstrate that the one bedroom apartment in the basement would have a floor space of 87m2 and the first floor flat would have a floor space of 97m2.

It is considered that the proposal would adequately meet basic lifestyle needs or provide a high standard of amenity for future occupiers.

Representations

N/A

Conclusion

The application has been submitted with insufficient information to allow the Local Authority to assess the above relevant impacts and the proposal is considered unacceptable. The proposed use of the basement for a dwelling without sufficient natural light is considered unacceptable.

Recommendation: PRIOR APPROVAL REFUSED

Decision Authorisation – Delegated Powers

Application Number: 2024/92298

Officer Recommendation: Refuse Details

1. The application provides insufficient information to adequately assess the transport and highways impacts of the development. Given the failure to demonstrate that the site is able to provide suitable waste collection and storage, the proposal would be contrary to Class MA.2 (a), Part 3 of

Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

1. The application provides insufficient information to adequately address the impact of commercial uses in terms of noise on future occupiers of the site. Given the failure to demonstrate that the site would be viable for occupation, the proposal would be contrary to Class MA.2 (b), Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

2. The proposal fails to provide adequate natural light to all habitable rooms of the dwellinghouse. The proposed plans demonstrate that there would be no windows serving the bedroom of the basement flat and the basement window intended to serve the living area/kitchen is of insufficient size and location to allow sufficient light to adequately penetrate the whole room. Therefore, it is considered that the property would not receive adequate natural light and as such, would not be acceptable with regard to MA.2(2)(f).

.

Plans and specifications schedule: -

Plan Type	**Reference**	**Revision**	**Date Received**
Location Plan		-	16/08/2024
Proposed floor plan	A101	-	16/08/2024
Proposed Elevation	A106	-	16/08/2024
Design and access statement		-	16/08/2024

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 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.

Following comments received from KC Environmental Health and a review of the details provided, it was established that additional information would be required and significant alterations required to the proposal to overcome the issues identified and adequately assess the proposal. Given that it would be unlikely that this level of information could be supplied and assessed in the time frame allocated to a prior notification, no further amendments or information were sought.