

**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/92299/E

**Site Address 64, Market Place, Market Street,
Heckmondwike, WF16 0HX**

**Description Prior notification for change of use
from commercial/business/service
to 2 residential 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. 2024/92299

Site Address: 64, Market Place, Market Street, Heckmondwike, WF16 0HX

Proposal: Prior notification for change of use from commercial/business/service to 2 residential flats

Site Description

The application relates to 64, Market Place, Market Street, Heckmondwike, WF16 0HX which is a two storey commercial property located in the centre of Heckmondwike. The building is constructed in stone and contributes to one of the main frontages in the town centre. 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

2009/92217: Installation of atm machine. Approved

2009/92218: Erection of illuminated and non-illuminated signs. Approved

91/01093: CHANGE OF USE FROM CLASS A1 AND A2 TO CLASS A3 (SHOP TO FOOD AND DRINK). **FC.**

94/92576: CHANGE OF USE FROM A1 RETAIL TO A2 FINANCIAL SERVICES. Conditional full permission

94/92832: RECTION OF 2 NO ILLUMINATED FASCIA SIGNS AND ILLUMINATED PROJECTING SIGN. Advertisement consent granted.

94/92860: INSTALLATION OF NEW SHOP FRONT AND ALTERATIONS.
Conditional full permission.

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.

Limitations for Part 3, Class MA.1 Development

Development is not permitted:-

(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	Sub-paragraph (a) has been omitted.
(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.

<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 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 path next to the unit which the bins are stored in. If available to be used by 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 the land is not owned by the applicant. 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 residential and commercial properties including the Red Lion Inn. The building would be altered to residential use at first floor only. No planning statement has been submitted which confirms that 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 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 submitted plans confirm that the apartments would benefit from a number of windows. 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 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 for a single person and 50m² for 2 persons. A two bedroom dwelling should have a floor space of 61m² for 3 persons and 70m² for 4 persons.

The Technical Space Standards advises that the gross internal area of a dwelling is defined as the total floor space measured between the internal faces of perimeter walls that enclose the dwelling. The dwelling for the purposes of flat one is considered not to include the shared hallway/stairwell to be used for both proposed flats as the shared area is not solely part of either dwelling and does not function as part of any living/sleeping space of the individual dwelling(s).

The proposed floor plans demonstrate that the one bedroom apartment (64B) would have a floor space of 34m². The submitted plan indicated a double room suggesting occupation by 2 persons thus less than 50m² although in the event it is demonstrated occupation for 1 person the proposed dwelling does not meet the national space standard of 37m².

Apartment 2 (64c) would have a floor space of 86m².

Due to apartment one failing to comply with minimum space Standards, it is considered that the proposal would not 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 plans also indicate the one bedroom flat does not meet the necessary space standards.

Recommendation: PRIOR APPROVAL REFUSED

Decision Authorisation – Delegated Powers

Application Number: 2024/92299

Officer Recommendation: REFUSE DETAILS

1. The applicant has failed to demonstrate that a suitable standard of living could be provided for the future occupiers of the site due to one of the units annotated as Flat 64B failing to meet the nationally described space standards. Therefore, the proposal would be contrary Article 9A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
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).
2. The application provides insufficient information to adequately address the impact of commercial uses in terms of noise impact on future occupiers of the dwellings. 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).

Plans and specifications schedule: -

Plan Type	Reference	Revision	Date Received
Location Plan		-	14/08/2024
Proposed first floor	A107	-	14/08/2024
Proposed ground floor	A106	-	14/08/2024
Existing	P1	-	14/08/2024

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.