

KIRKLEES METROPOLITAN COUNCIL INVESTMENT & REGENERATION SERVICE

DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended) – SECTION 73

DELEGATED DECISION TO DETERMINE PLANNING APPLICATIONS TO CARRY OUT DEVELOPMENT WITHOUT COMPLIANCE WITH PLANNING CONDITIONS PREVIOUSLY ATTACHED

Reference No:	2025/70/90510/W
Site Address:	44-48, Westgate, Huddersfield, HD1 1NX
Description:	Variation of condition 2. (plans) on previous permission no. 2023/91871 for Change of use from retail (Ea use) to form 6 residential apartments (C3 use) on the ground and basement floors with external alterations (within a Conservation Area)
Recommending Officer:	Kerri Simpson

DECISION – VARIATION OF CONDITION APPROVED

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.

John Holmes

AUTHORISED OFFICER

Date: 30-Apr-2025

Officer Report – 2025/90510

Site Description

The application site relates to a four-storey, stone-built building located within Huddersfield Town Centre, positioned on the junction of Westgate and St George's Street. The ground floor of the building was previously occupied by a retail outlet named 'Department Forty-Four', this use has now ceased. The upper floors of the building have been previously converted into residential apartments.

The site is located within Huddersfield Town Centre Conservation Area and adjoins and is located adjacent to several Listed Buildings.

Description of Proposal

The Scheme

The Section 73 application is sought to make alterations to the previously approved scheme 2023/91871 approved 24th April 2024, the description of development for which reads as:

Change of use from retail (Ea use) to form 6 residential apartments (C3 use) on the ground and basement floors with external alterations (within a Conservation Area).

The proposal seeks to vary Condition 2 (Approved plans) pursuant to planning permission 2023/91871. The proposal seeks to reconfigure the approved floor plans, including:

- Changing five duplex studio flats (basement and ground floors) to single level studio flats (ground floor) with mezzanine.
- Formation of a reception area at ground floor level
- Retention of existing storage and toilet facilities at basement level
- Removal of communal facilities including games room, gym and snug at basement level
- Reconfiguration of bin and cycle storage spaces at basement level
- Removal of approved door to George Street elevation
- Insertion of door and window at basement level to Temple Close elevation
- Removal of one approved door to Westgate elevation

Supporting Information

In addition to the submitted plans the following documents have been submitted to support the application to support the application:

- Design and Access Statement (ref 2023 enquiry 47, dated 18.02.25)
- Heritage statement (ref 2023 enquiry 47, dated 18.02.25)

- Justification statement (ref 2023 enquiry 47, dated 15.04.25)
- Schedule of floor areas (dated 15.04.25)

During the course of the assessment of the application, the following amended plans and additional information was submitted for consideration:

- Schedule of Areas (Received 15.04.2025)
- 300 Rev A Proposed Ground Proposed Ground Floor Plan
- 301 Rev A Proposed Basement Proposed Basement Plan
- 302 Rev A Proposed Mezzanine Proposed Mezzanine Floor Plan

History of Negotiations / Amendments Received

On 15th April 2025, officers sought clarification and further information from the agent to ascertain that the altered units would comply with the Nationally Described Space Standards in that they would achieve a minimum floor to ceiling height of 2.3m across at least 75% of the Gross Internal Area (GIA), given the inclusion of mezzanine levels with a floor to ceiling height of 1.5 to 1.6m and that all relevant units could achieve a minimum of 37-39sqm GIA as required for 1 bedroom 1 person dwellings. Amendments were made to the floor areas of the mezzanine levels and officers received confirmation of floor spaces through the submission of a schedule of areas. Officers are sufficient information to make an assessment.

Relevant Planning History

The most relevant planning history relates to the following planning applications:

2023/91871 - Change of use from retail (Ea use) to form 6 residential apartments (C3 use) on the ground and basement floors with external alterations (within a Conservation Area). Approved 24th April 2024.

2021/93278 – Notification for prior approval for change of use from retail shop to restaurant with building operations (Conservation Area). Withdrawn/Invalid 17th August 2021.

2018/93207 – Formation of new shop front to create 3 no. shops and internal alterations (within a Conservation Area). Approved 27th February 2019.

2016/92714 – Notification for prior approval for change of use of part of shop (Class A1) to restaurants and café (Class A3) (within a Conservation Area). Approved 6th October 2016.

2015/93150 – Alterations to form duplex apartment on first and second floors, erection of extension to form roof top apartment and installation of photovoltaic solar panels on roof (within a Conservation Area). Approved 11th April 2016.

2013/92354 – Discharge conditions 4 (ventilation) and 5 (bin collection) on previous permission

2013/90650 for alterations to convert existing retail unit to 11 flats (within a Conservation Area). Approved 19th December 2013.

2013/90650 – Alterations to convert existing retail unit to 11 flats (within a Conservation Area). Approved 28th June 2013.

2008/91481 – Variation of conditions 11 and 14 relating to materials used for exterior walls and roof on previous permission 2005/62/90510/W1 for demolition of existing shop and erection of new shop (within a Conservation Area). Approved 15th July 2008.

Representations

Publication of the application has been undertaken in accordance with the Council's Development Management Charter.

The application has been publicised as development affecting the setting of a listed building and the setting of a conservation area on the Council's website, by neighbour notification, site notice and by press advertisement. The expiry date of the publicity period was the 11th April 2025.

There were no letters of representation received.

Consultation Responses

No formal consultations were undertaken as part of this application. The principle of development has already been established under the original permission. The current proposals primarily relate to internal reconfiguration and minor external alterations. Officers are satisfied that the nature and scale of the proposed changes do not raise any new material planning considerations that would warrant consultation with statutory or non-statutory consultees.

Allocation and Policy

The site is not allocated within the Kirklees Local Plan (adopted 2019). The application site is located within Huddersfield Town Centre, Secondary Shopping Frontage, Huddersfield Town Centre Conservation Area and Coal Referral Area. The site adjoins and is adjacent to several Listed Buildings.

Whilst it is acknowledged that the application site is located within a Coal Referral Area, given the nature of the proposal is for the conversion of an existing building with minimal external alterations proposed, it is considered unreasonable to request a Coal Mining Risk Assessment in this instance, especially in relation to Coal Authority advice.

The following legislation, policy and guidance is considered relevant to the determination of this application:-

Kirklees Local Plan

- LP1 – Achieving Sustainable Development
- LP2 – Place Shaping
- LP7 – Efficient and Effective Use of Land
- LP11 – Housing Mix and Affordable Housing
- LP13 – Town Centre Uses
- LP14 – Shopping Frontages
- LP15 – Residential Uses in Town Centres
- LP17 – Huddersfield Town Centre
- LP20 – Sustainable Travel
- LP21 – Highways and Access
- LP22 – Parking
- LP24 – Design
- LP35 – Historic Environment
- LP51 – Protection and Improvement of Local Air Quality
- LP52 – Protecting and Improvement of Environmental Quality

National Policies and Guidance

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published December 2024, the Planning Practice Guidance Suite (PPGS) first launched 6th March 2014 together with Circulars, Ministerial Statements and associated technical guidance. In this case the Technical housing standards – nationally described space standard guidance document (dated March 2015) is considered to be of relevance

The NPPF constitutes guidance for local planning authorities and is a material consideration in determining applications.

- Chapter 2 – Achieving sustainable development
- Chapter 4 – Decision-making
- Chapter 5 – Delivering a sufficient supply of homes
- Chapter 7 – Ensuring the vitality of town centres
- Chapter 8 – Promoting sustainable transport
- Chapter 9 – Promoting Sustainable Transport
- Chapter 11 – Making effective use of land
- Chapter 12 – Achieving well-designed places
- Chapter 14 – Meeting the challenge of climate change, flooding and coastal change
- Chapter 15 – Conserving and enhancing the natural environment
- Chapter 16 – Conserving and enhancing the historic environment

Supplementary Planning Documents and guidance

- Kirklees Highways Design Guide (2019)

- Housebuilders Design Guide SPD (2021)
- Climate Change Guidance for Planning Applications
- Waste Management Design Guide for New Developments (Version 5, October 2020)

Legislation

- The Town & Country Planning Act 1990 (as amended).
- The Town & Country Planning (Listed Buildings & Conservation Areas) Act 1990
- The Planning and Compulsory Purchase Act 2004.
- Section 17 of the Crime and Disorder Act 1998 (as amended)

Section 38(6) of the Planning and Compulsory Purchase Act 2004 sets out that in considering planning applications the determination must be made in accordance with the plan unless material considerations indicate otherwise.

Section 72 of the Town & Country Planning (Listed Buildings & Conservation Areas) Act 1990 requires Local Planning Authorities to pay special attention to the desirability of preserving or enhancing the character or appearance of Conservation Areas.

When making a recommendation in respect of a planning application affecting a Listed Building or its setting, attention must be given to Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires the Local Planning Authority to 'have special regard to the desirability of preserving the building or its setting or any features of a special architectural or historic interest which it possesses'.

Assessment

The ability to seek minor material amendments to extant planning permissions is set out within S.73 of the Town and Country Planning Act 1990. Unlike an application for 'nonmaterial changes' (S.96a applications) an application under S.73 results in a new permission being issued, although the time given to implement the permission remains unchanged, and is not extended as a result of any S.73 permission. Whilst a planning authority should take into consideration all relevant matters, including current policies at the point it determines a S.73 application, it must also take into account the scope of the changes being requested, and the status of the permission, in terms of how far construction has progressed.

The planning issues relevant to the overall development were set out in full in the Case Officers report on application 2023/91871. The requested changes relate to design and internal reconfiguration of the approved development.

The submitted amendments predominately involve internal reconfiguration of the approved layout. Five of the six units would be arranged solely at ground floor level, with the sixth unit occupying both ground and basement levels. The remainder of the basement is allocated for ancillary uses, including

storage, bin and cycle provisions. These internal changes do not materially alter the nature, scale or use of the development as approved. The proposal remains for six residential units and does not result in any amendments to the approved land use.

1. Internal Layout

The original permission was for six duplex studio units arranged across basement and ground floor. It is noted that the proposed plans for consideration show that the ground floor level of the majority of the units would serve as principal living area, with ancillary mezzanine levels above. The proposed amendments seek to provide five units solely at ground floor level, with one unit retaining its duplex status. The mezzanine level to the five flats would be positioned above ground level, with head heights ranging between circa 1.5m and 1.6m, due to the presence of structural beams.

The proposed amendments would result in the following Gross Internal Areas (GIA) for the six residential units:

- Unit 1: 42sqm (ground floor) + 7sqm (mezzanine) = 49sqm total (85% with 2.3m+ height)
- Unit 2: 34sqm (ground floor) + 5sqm (mezzanine) = 39sqm total (87% with 2.3m+ height)
- Unit 3: 22sqm (ground floor) + 20sqm (basement) = 42sqm total (100% with 2.3m+ height)
- Unit 4: 31sqm (ground floor) + 10sqm (mezzanine) = 41sqm total (75% with 2.3m+ height)
- Unit 5: 31sqm (ground floor) + 7sqm (mezzanine) = 38sqm total (82% with 2.3m+ height)
- Unit 6: 30sqm (ground floor) + 10sqm (mezzanine) = 40sqm total (75% with 2.3m+ height)

When including the mezzanine or basement areas, each unit achieves a Gross Internal Area (GIA) of at least 37sqm, which meets the minimum requirement for 1 bedroom 1 person unit with shower room, set out in the Nationally Described Space Standards (NDSS). Furthermore, at least 75% of the floor area within each unit achieves a minimum floor to ceiling height of 2.3 meters. The proposed mezzanine areas would provide ancillary space and additional storage without compromising the primary living accommodation. Therefore, on balance, it is considered that the internal layouts for the units would provide an acceptable standard of accommodation for future occupiers.

The proposed internal reconfiguration would result in parts of the basement being used for general storage, bin storage, and cycle storage, ancillary to the residential use of the building. Given the extent of the “store” areas as shown on drawing number 301 Rev A Proposed Basement, and to prevent any future intensification or unauthorised use of the basement space, it is considered reasonable and necessary to impose a condition to restrict the use of the basement areas for purposes ancillary to the residential units only. This

condition would ensure that the basement areas cannot be separately occupied, sold or let independently, thereby safeguarding the residential character and nature of the development. A concierge reception area is also proposed at ground floor level to serve the residential units. This would be ancillary to the C3 use and would not result in any material change to the nature of the proposed development as approved.

The previously approved communal facilities including the Games Room, Gym and Snug are no longer proposed as part of the development. The removal of these elements is not considered to have a material impact on the overall quality of the scheme or the level of amenity afforded to future occupiers. These facilities were not required to make the original development acceptable in planning terms, and their loss is therefore considered acceptable.

The proposal continues to seek a conversion of an existing building, and the nearest residential receptors are located on the upper floors of the application building. The proposed internal changes would not give rise to overlooking, overshadowing or new impacts on the amenity of these neighbouring properties.

The waste storage area at basement level would be enlarged and retain provision for the six units, accommodating a total of 1080 litres total (6 x 180ltrs bins). A dedicated internal cycle storage area is also proposed at basement level, which would be accessible via Temple Close and internally through the building by means of a ramp. Given the limited floor area within each unit, the provision of a communal cycle storage facility is considered acceptable and would sufficiently meet the needs of future occupiers.

The proposed internal alterations, including the reconfiguration of residential layouts and the provision of storage, waste and cycle storage areas, would provide an acceptable standard of accommodation for future occupiers and would not result in any material harm to residential amenity subject to an additional condition to ensure basement areas (excluding that of unit 3) shall only be used for purposed ancillary to the approved C3 use. As such, subject to conditions, it is considered that the proposal would comply with Policies LP24 and LP20 of the Kirklees Local Plan and Chapter 8 of the National Planning Policy Framework (NPPF) 2024.

2. External Appearance

The proposed alterations to the Westgate elevation would consolidate the previous arrangements of separate entrances at ground level into a single main communal entrance, together with consistent window sections. Similarly, the St George Street elevation would see the removal of one door from the proposal, again replaced with a window consistent with that previously approved in the development.

Alterations are also proposed to the Temple Close elevation compared to the previously approved scheme. The main change involves the omission of the

secondary entrance door previously approved to serve a unit, instead, this would serve as a fire door for the building. A small window opening is sought to be removed from the proposals at basement level, as this would no longer be required to serve a unit.

The proposed alterations would result in a cleaner and more coherent frontage and are not considered to harm the character of the host building nor the wider Conservation Area. The development would therefore comply Policies LP24 and LP35 of the Kirklees Local Plan and Chapter 16 of the National Planning Policy Framework (NPPF) 2024.

3. Other Matters

Reimposition of conditions

No conditions imposed on application 2023/91871 have been discharged nor are there currently any other live applications relating to this permission.

Environmental Health were consulted on the previous application (reference 2023/91871) and raised no objections, subject to the imposition of conditions relating to ventilation, internal noise mitigation, sound insulation and construction working hours. The current Section 73 application proposes predominately internal alterations, and no further consultation was undertaken given that the proposals would not materially worsen the environmental conditions previously assessed. However, the Environmental Health conditions remain relevant and necessary, as they relate to the management and mitigation of noise to future residential occupiers, in the interests of Policies LP24 and LP52 of the Kirklees Local Plan and Chapters 12 and 15 of the National Planning Policy Framework.

The Council's Conservation and Design Officer was consulted on the previous application, requesting conditions be imposed in respect of the proposed vents to be installed within the main principal elevations of the building, facing on to Westgate and St George's Street. Window and door specifications were also requested by condition. As vents are a retained feature and the amendments are proposed to approved windows and doors In the interests of providing a satisfactory appearance of the development upon completion and to conserve and enhance the character and appearance of the Huddersfield Town Centre Conservation Area, in accordance with Policies LP24 and LP35 of the Kirklees Local Plan, Chapters 12 and 16 of the National Planning Policy Framework, these conditions shall be reimposed.

7. Representations

No representations have been received.

8. Conclusion

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, the proposed development would constitute sustainable development and is therefore recommended for approval.

Recommendation

APPROVE

Decision Authorisation: Delegated Powers

Application Number: 2025/90510

Officer Recommendation: APPROVE

Conditions

1. The development hereby permitted shall be begun by 24th April 2027.
Reason: Pursuant to the requirements of Section 91 of the Town and Country Planning Act 1990 (as amended).
2. 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, LP7, LP11, LP13, LP14, LP15, LP17, LP20, LP21, LP22, LP24, LP35, LP51 and LP52 of the Kirklees Local Plan, Chapters 2, 4, 5, 7, 8, 9, 11, 12, 14, 15 and 16 of the National Planning Policy Framework and Principles 2, 5, 6, 12, 13, 14, 15, 16, 17, 18 and 19 of the Housebuilders Design Guide SPD.
3. All areas at basement level, excluding the approved residential unit, as shown on submitted drawing no. 301 Rev A, shall be used solely for the purpose's ancillary to the Use Class C3 residential development hereby approved. These areas shall not be occupied, sold, leased, or otherwise used independently of the approved residential units without prior written consent of the Local Planning Authority.
Reason: In the interests of safeguarding residential amenity, preventing the intensification of the site, and ensuring compliance with Policy LP24 of the Kirklees Local Plan and Chapter 8 of the National Planning Policy Framework.
4. Prior to occupation, a further/addendum report specifying the measures to be taken to protect the development from noise from all significant noise sources that are likely to affect the proposed development including the plant room and mechanical lift shall be submitted to and

approved in writing by the Local Planning Authority. The report shall: a) Determine the existing noise climate; b) Predict the noise climate in living rooms (daytime), bedrooms (night-time) and other habitable rooms of the development and; c) Detail the proposed attenuation/design necessary to protect the amenity of the occupants of the new residences (including ventilation if required). The development shall not be occupied until all works specified in the approved report have been carried out in full and such works shall be thereafter retained.

Reason: To protect the amenity of occupiers of the proposed development from noise or disturbance from nearby noise generating premises to accord with the aims of Policies LP24 and LP52 of the Kirklees Local Plan and Chapters 12 and 15 of the National Planning Policy Framework. This prior to occupation condition is required to ensure that details relating to noise and how, if required it can be mitigated against, are devised and agreed at an appropriate stage of the development process.

5. Before the development is brought into use written evidence to demonstrate that the airborne sound insulation performance of the party floors/walls/ceiling of the development is of a minimum of 55dB Dntw+Ctr shall be submitted to and approved in writing by the Local Planning Authority. If it cannot be demonstrated that the aforementioned airborne sound insulation performance has been achieved, a scheme incorporating further measures to achieve the sound insulation performance shall be submitted to and approved in writing by the Local Planning Authority. All works comprised within those further measures shall be completed and further written evidence to demonstrate that the aforementioned sound insulation performance level has been achieved shall be submitted to and approved in writing by the Local Planning Authority before the development is first brought into use.

Reason: To protect the amenity of occupiers of the proposed development from noise or disturbance from nearby noise generating premises to accord with the aims of Policies LP24 and LP52 of the Kirklees Local Plan and Chapters 12 and 15 of the National Planning Policy Framework.

6. Before the development is brought into use, a MVHR system with Zehnder Nox filters shall be installed within the apartments, in accordance with the details outlined within the approved elevation and floor plans and Brookvent Aircycle 3.1: Heat Recovery Ventilation Brochure, received 24th November 2023 under application reference number 2023/91871. Once installed, the Zehnder Nox filters shall be maintained as per the manufacturers recommendations and be retained thereafter.

Reason: To protect the amenity of occupiers of the proposed development and to ensure that future occupiers of the dwellings are not subject to poor air quality, to accord with the aims of Policies LP24

and LP52 of the Kirklees Local Plan and Chapters 12 and 15 of the National Planning Policy Framework.

7. Notwithstanding the submitted plans and information, no works to replace, modify or install new windows or doors shall be undertaken until full details including profiles, dimensions, colour and depth within the reveals at a scale of 1:20 (elevations) and 1:5 (joinery details) of the windows and doors to be installed, modified and replaced been submitted to and approved in writing by the Local Planning Authority. Thereafter works to replace, modify or install new windows and doors shall be undertaken in complete accordance with the details so approved and be retained thereafter.

Reason: To ensure the satisfactory appearance of the development upon completion and to conserve and enhance the Huddersfield Town Centre Conservation Area, to accord with Policies LP1, LP2 LP24 and LP35 of the Kirklees Local Plan, Chapters 12 and 16 of the National Planning Policy Framework and Principle 2 of the Housebuilders Design Guide SPD.

8. Notwithstanding the submitted plans and information, detailed plans at a scale of 1:20 and technical specification of proposed external vents to both principal elevations on the building which face on to St George's Street (to the west) and Westgate (to the south) shall be submitted and approved in writing by the Local Planning Authority prior to their installation. The development shall then be completed in accordance with the approved details and retained thereafter.

Reason: To ensure the satisfactory appearance of the development upon completion and to conserve and enhance the Huddersfield Town Centre Conservation Area, to accord with Policies LP1, LP2 LP24 and LP35 of the Kirklees Local Plan, Chapters 12 and 16 of the National Planning Policy Framework and Principle 2 of the Housebuilders Design Guide SPD.

NOTE: No construction related noise shall be audible beyond the site boundary outside the hours of: 07.30 to 18.30 hours Mondays to Fridays
08.00 to 13.00 hours, Saturdays with no construction related noise audible beyond the site boundary on Sundays or Public Holidays.

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.

Plans and specifications schedule: -

Plan / document type submitted as part of application 2025/90510	Reference	Version	Date Received
Site Location Plan	100		25/02/2025
Existing Rear Elevation	305		25/02/2025
Existing George Street Elevation	308		25/02/2025
Existing Westgate Elevation	309		25/02/2025
Proposed Ground	300	A	15/04/2025
Proposed Basement	301	A	15/04/2025
Proposed Mezzanine	302	A	15/04/2025
Proposed Typical Cross Section Apartment 3	303		25/02/2025
Proposed Typical Cross Section Apartment 1	304		25/02/2025
Proposed Rear Elevation	306		25/02/2025
Proposed George Street Elevation	307		25/02/2025
Proposed Westgate Elevation	310		25/02/2025
Design and Access Statement			25/02/2025
Heritage Statement			25/02/2025
Justification statement			15/04/2025
Schedule of Areas			15/04/2025
Plan / document type submitted as part of application 2023/91871	Reference	Version	Date Received
Brookvent Aircycle 3.1 Brochure – Supporting Information			3rd July 2023
Brookvent Aircycle 3.1: Heat Recovery Ventilation Brochure – Supporting Information			24th November 2023

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 2024 and otherwise actively engaged with the applicant in dealing with the application. During the course of the application, officers sought clarification regarding compliance with Nationally Described Space Standards (NDSS) and the internal floor-to-ceiling heights. Amendments were subsequently made to the internal layouts, and a schedule of floor areas was submitted.

28th April 2025