

**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:         | <b>2023/70/90144/W</b>                                                                                                                                                                         |
| Site Address:         | Abc Childrens Day Nursery, 193, Newsome Road<br>South, Newsome, Huddersfield, HD4 6JH                                                                                                          |
| Description:          | Variation of condition 5 (no. of children) and 6 (use of<br>premises) on previous permission 2001/90921 for<br>change of use from nursing home to childrens nursery<br>with associated parking |
| Recommending Officer: | Tom Hunt                                                                                                                                                                                       |

**DECISION – VARIATION OF CONDITIONS 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: 15-Mar-2023

## Officer Report

### Site Description

Abc Childrens Day Nursery is a detached property located within a residential area and with a large field adjacent which is likely to be developed with dwellings. The property is set back from the roadside with a large car park is accessed from Newsome Road South. It has been in use as a long running existing Day Nursery over the last 20 years.

### Description of Proposal

Permission is sought to vary of condition 5 (no. of children) and 6 (use of premises) on previous permission 2001/90921 for change of use from nursing home to childrens nursery with associated parking.

Condition 5 related to the number of children the property to accommodate and states:

*“(5) Unless otherwise agreed in writing by the Local Planning Authority no more than 50 children shall be accommodated on the site at any one time.”*

The reason for the imposition of the Condition was:

*“To safeguard the amenities of nearby residents and to accord with Policy B12 of the Unitary Development Plan.”*

*“(6) The premises shall be used as a Nursery (Class D1 b of the Schedule to the Town and Country Planning (Use Classes) Order 1987) and for no other purpose. (including any other purpose in Class D of the Schedule to the Town and Country Planning (Use Classes) Order 1987) (particularly retail sales).”*

The reason for the imposition of the Condition was:

*“So as not to detract from the amenities of the adjoining property arising from uses inappropriate within a residential area, In the interests of the free and safe use of the highway and to accord with Policies B12 and T10 of the Unitary Development Plan.”*

It is proposed to increase the number of children accommodated on the site by 12, which would now be 62 children, and to have the premises to be designated as a Nursery and Out of School Club to have flexible working arrangements.

It is proposed to use the Foundation Class Room for the After School Club in the nursery building premises to allow a more flexible, affordable and sustainable care. In addition, disabled access and provision is needed for a

ground floor bedroom with bathroom facilities to meet the needs under the Equality Act 2010.

There are 17 car parking spaces. In addition, operation of a 'Walking Bus' for the Out of School Club children contributes to minimum impact on neighbours in relation to traffic.

There are no visual changes to the detached building internally or externally.

### **History of negotiations/amendments received**

No negotiations have taken place nor have amended plans been sought or submitted.

### **Relevant Planning History**

87/03298 – 193, Newsome Road South, Newsome, Huddersfield. 12 bedroom extension to residential house. Granted.

89/01831 – Whitehouse Residence/193 , Newsome Road South, Newsome, Huddersfield.

Erection of extensions to form bedrooms over existing flat roof. Granted.

89/06069 – Whitehouse Residence/193, Newsome Road South, Newsome, Huddersfield.

Erection of first floor extension to form bedroom over existing flat roof. Granted.

2001/90921 – 193, Newsome Road South, Newsome, Huddersfield. Change of use from nursing home to childrens nursery with associated parking. Conditional Full Permission.

2002/90985 – The White House, 193, Newsome Road South, Newsome, Huddersfield, HD4 6JH. Demolition notification for the prior approval of details for demolition of a former residential nursing home. Details Approved.

### **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: 02/03/2023

Site Notice Expired: 10/03/2023

No representations have been received.

### **Consultation Responses**

The following is a brief summary of Consultee advice (more details are contained in the Assessment section of the report, where appropriate):

## **Policy**

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 Plan for Kirklees is the Local Plan (adopted 27<sup>th</sup> February 2019).

The site itself is unallocated land for development and it is within Newsome Local Centre in the Kirklees Local Plan. The following are policies considered relevant to the proposed amendment of conditions 5 and 6:

### **Kirklees Local Plan (LP):**

- **LP1 – Presumption in favour of sustainable development**
- **LP2 – Place shaping**
- **LP21 – Highways and access**
- **LP22 – Parking**
- **LP24 – Design**

### **Supplementary Planning Guidance**

- Highways Design Guide SPD

### **National Policies and Guidance:**

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 20<sup>th</sup> July 2021, the Planning Practice Guidance Suite (PPGS) first launched 6<sup>th</sup> March 2014 together with Circulars, Ministerial Statements and associated technical guidance.

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 9 – Promoting sustainable transport
- Chapter 12 – Achieving well-designed places

## **Assessment**

This Section 73 application seeks minor material variations to the original condition 5 increasing the number of children by 12. It seeks a change of use from nursery to Nursery and Out of School Club within original condition 6.

Both were considered taking into account the effect on the residential character of the premises and neighbours, provision of children's play facilities on residential amenity, adequacy of car parking facilities and material changes to highway safety.

It is considered that the key determining issue is the consideration of this application is the impact upon residential amenity, access and highway safety. The National Planning Policy Framework was introduced post this application being made however is not considered to have changed significantly the determining issues considered applicable in this instance.

In relation to condition 5, the extra child care provision of 12 children was reviewed with KC Environmental Health and the Officer did not have any objections to this. A search of their records showed no complaints related to the facility in relation to noise or other matters affecting residential amenity. It was considered that 12 extra children, within or in the play areas, could be accommodated without a significant impact on residential amenity.

Officers are satisfied that the physical structure of the proposed building would not be changed to cause any detrimental harm to the amenity of the occupiers of surrounding properties and that the proposal complies with Policy LP24 of the KLP which states

*“proposals should provide a high standard of amenity for future and neighbouring occupiers, including maintaining appropriate distances between buildings”.*

The scale and form of the building is existing and there would be no additional overbearing, overlooking or loss of privacy to nearby occupiers.

The proximity of the site to public transport, large well-served, car parking facilities with 17 parking bays and schemes such as walking buses also serve to reduce potential impacts on highway safety and parking demand adequately to serve a small increase in children within the facility.

The Town and Country Planning (Use Classes) Order 1987 (as amended) puts uses of land and buildings into various categories known as 'Use Classes'. Those have been revised since the original permission with Nurseries being allocated under Class E(f) Creche, day nursery or day centre (not including a residential use).

It is noted that Creche, day nursery or day centres do not have any limitation in terms of age and that the proposed variation of Condition 5 to include Out of School Club would not change the Use Class permitted under the original permission. While a disabled bedroom is not explicitly stated within this Use Class, the role of the proposed additional bedroom for a disabled person would be for day-time use as part of their requirements to provide suitable access/provision and not as an overnight facility. The main purpose of the facility would remain to be a Nursery and it is considered the details provided set out that the use would be within the that as permitted by use class E(f).

There are no other matters for consideration. No other conditions have been applied to be varied and none were required to be discharged since the granting of the previous permission.

#### *Review of conditions*

In the instance of any grant of approval of a S73 application a new consent is issued by the LPA, as such all conditions upon the original consent are required to be reviewed and where necessary re applied or amended. This section sets out a review of all conditions varied:

Condition 5 is to be varied from:

Original:

(5) Unless otherwise agreed in writing by the Local Planning Authority no more than 50 children shall be accommodated on the site at any one time.”

**Reason:** To safeguard the amenities of nearby residents and to accord with Policy B12 of the Unitary Development Plan.

Varied:

Unless otherwise agreed in writing by the Local Planning Authority no more than 62 children shall be accommodated on the site at any one time.

**Reason:** To safeguard the amenities of nearby residents and to accord with Policy LP24 of the Kirklees Local Plan and Chapter 12 of the NPPF.

Condition 6 is to be varied reflecting the change in the Town and Country Planning (Use Classes) Order 1987) (as amended) to from:

Original:

(6) The premises shall be used as a Nursery (Class D1 b of the Schedule to the Town and Country Planning (Use Classes) Order 1987) and for no other purpose. (including any other purpose in Class D of the Schedule to the Town and Country Planning (Use Classes) Order 1987) (particularly retail sales).

**Reason:** So as not to detract from the amenities of the adjoining property arising from uses inappropriate within a residential area, In the interests of the free and safe use of the highway and to accord with Policies B12 and T10 of the Unitary Development Plan.

Varied:

(6) The premises shall be used as a Nursery and Out of School Class (Class E(f) ‘Creche, day nursery or day centre (not including a residential use)’ of the Schedule 2, Part A ‘Commercial, Business and Service’ to the Town and Country Planning (Use Classes) Order 1987 (as amended) and for no other purpose (including any other purpose in Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended)).

**Reason:** So as not to detract from the amenities of the adjoining residential properties arising from uses inappropriate within a residential area, in the interests of the free and safe use of the highway and to accord with Policies

LP24, LP21 and LP22 of the Kirklees Local Plan and Chapter 9 and 12 of the NPPF.

### **Other conditions**

Condition 1 of the 2001 consent is no longer necessary as it required the development to be commenced within a time limit, the use has commenced.

Condition 2 of the 2001 consent requires the areas shown for parking on the approved plan shall be kept clear of all obstructions to such use and shall not be used for the erection of garages. This shall be included as worded on any grant of permission.

Condition 3 of the 2001 consent required a traffic management scheme to be submitted and discharged by the LPA. Given the length of time the site has been in operation it is considered the site has established within the locality without any significant problems arising. Whilst there would be 12 more users of the site it is considered this is not a significant increase and there is no longer a requirement for the inclusion of condition 3 upon any grant of permission.

Condition 4 of the 2001 consent requires the hours of use to be between the hours of 08.00 and 19.00 Monday to Friday. This condition shall be included as worded on any grant of permission.

Condition 7 of the 2001 consent required the entrance to be formed and the existing entrance blocked up and the footway reinstated before the childrens` nursery was first brought into use. These works have taken place and it is not considered necessary to include this condition on any grant of permission.

In relation to condition 3 and 7 it should be noted that any non-compliance with the requirements of those conditions is now immune from enforcement action due to the passage of time.

### **CONCLUSION & RECOMMENDATION**

There has been no significant change to the site allocation or national/local planning policy and guidance since the 03/04/2001 consent (2001/90921). It is therefore considered that, subject to the wording of conditions being amended, where relevant, to the wording set out in the 'Review of Conditions' section of this report and all informative notes imposed on the 03/04/2001 consent (2001/90921) being re-imposed on this Section 73 application the proposal is acceptable.

It is therefore concluded that the variations to the conditions proposed under this Section 73 application are acceptable and do not alter the conclusions reached and the recommendation made for application 2001/90921.

**Approval is recommended.**

**Recommendation**

**APPROVE**

**Decision Authorisation - Delegated**

**Application Number:** 2023/90144

**Officer Recommendation:** Approve

**Conditions:**

1. The areas shown for parking on the approved plan shall be kept clear of all obstructions to such use and shall not be used for the erection of garages.

**Reason:** In the interests of the free and safe use of the highway and to accord with Policy LP21 and LP22 of the Kirklees Local Plan and Chapters 9 and 12 of the NPPF.

2. No activity shall take place on the premises outside the hours of 08.00 and 19.00 Monday to Friday or at any time on Saturdays, Sundays (and Bank Holidays) unless otherwise agreed in writing by the Local Planning Authority

**Reason:** To safeguard the amenities of nearby residents and to accord with Policy LP24 of the Kirklees Local Plan and Chapter 12 of the NPPF.

3. Unless otherwise agreed in writing by the Local Planning Authority no more than 62 children shall be accommodated on the site at any one time.

**Reason:** To safeguard the amenities of nearby residents and to accord with Policy LP24 of the Kirklees Local Plan and Chapter 12 of the NPPF.

4. The premises shall be used as a Nursery and Out of School Class (Class E(f) 'Creche, day nursery or day centre (not including a residential use)' of the Schedule 2, Part A 'Commercial, Business and Service' to the Town and Country Planning (Use Classes) Order 1987 (as amended) and for no other purpose (including any other purpose in Class E of the Town and Country Planning (Use Classes) Order 1987 (as amended)).

**Reason:** So as not to detract from the amenities of the adjoining residential properties arising from uses inappropriate within a residential area, in the interests of the free and safe use of the highway and to accord with Policies LP2, LP24, LP21 and LP22 of the Kirklees Local Plan and Chapter 9 and 12 of the NPPF.

**NOTE** This permission shall relate to the revised layout plans submitted on 2 August 2001.

**NOTE** Alterations to your proposal to improve access for people with disabilities may be eligible for grant aid. Please contact the Council's access officer for further information on 01484 223324.

**NOTE** Alterations to your proposal to improve access for people with disabilities may be eligible for support. Please contact the Council's Inclusion Support Offer team for further information on 01484 416440 or via



<https://www.kirkleeslocaloffer.org.uk/iso/help-for-senco-s-and-education-professionals-the-inclusion-support-offer/>

Plans and specifications schedule:-

| <b>Plan Type</b>     | <b>Reference</b>             | <b>Version</b> | <b>Date Received</b> |
|----------------------|------------------------------|----------------|----------------------|
| Location Plan        | Ref:<br>TQRQM23016094830627. | Original       | 16/01/2023           |
| Planning Application |                              | Original       | 16/01/2023           |

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 2015 and otherwise actively engaged with the applicant in dealing with the application. The application was considered acceptable in its submitted format and no further information was sought from the applicant.

**Report Dated:** 13/03/2023