KIRKLEES METROPOLITAN COUNCIL
INVESTMENT & REGENERATION SERVICE

DEVELOPMENT MANAGEMENT

Town and Country Planning Act 1990 (as amended) – SECTION 70

DELEGATED DECISION TO DETERMINE PLANNING APPLICATIONS

Reference No:	**2023/62/91886/W**
Site Address:	Land at, Common Road, Birkby, Huddersfield, HD1 5EU
Description:	Erection of drinks and confectionary cabin (within a Conservation Area)
Recommending Officer:	Katie Chew

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.

Teresa Harlow

AUTHORISED OFFICER

Date: 17th August 2023

Officer Report

Site Description

Land at, Common Road, Birkby, Huddersfield, HD1 5EU

The application site comprises of a portion of land currently used as a car parking area and bin storage. The site is located in between Common Road and Miln Road and with access available from both the east and west. The site is bounded by a dry-stone wall and timber fencing with metal gates. Within the immediate area there are a number of commercial, industrial and residential uses.

The site is located within Birkby Conservation Area and is adjacent to several Listed Buildings to the east/south-east.

Description of Proposal

The application seeks planning permission for the erection of drinks and confectionary cabin (within a Conservation Area).

The proposed cabin is to be located along the western boundary of the existing car park located between Common Road and Miln Road. The cabin is to be in Class E(a) use selling drinks and confectionary. The cabin will measure approximately 6.2m x 2.4m, with an overall height of 2.5m, and is to be finished/clad in natural timber.

The E(a) use class applied for relates to the 'display or retail sale of goods, other than hot food'. Within the submitted heritage statement it is outlined that the cabin is to be used as a tea/coffee cabin and within the application forms it is highlighted as being for the sale of tea and sweets. There is to be 1 full time employee and 3 part-time employees working at the cabin, with opening hours operating Monday – Friday 11am – 11pm, Saturday 11am-11pm and Sundays and bank holidays 12pm-10pm.

The submission sets out that no parking spaces are to be lost within the car parking area.

Bin storage is displayed to the north of the proposed unit, with no details provided in respect of the collection point, although it is acknowledged that upon visiting the site, at present collection appears to be on the footpath to the south of the application site.

History of negotiations/amendments received

No amendments have been sought in this instance.

Relevant Planning History

2013/93729 – Change of use from shop/office to daycare centre/nursery/play gym (within a Conservation Area). Approved 18th February 2014.

2012/93266 – Discharge of condition 4 on previous application no. 2012/91171 for Change of Use from Day Nursery to student apartments and reroofing existing roof (within a Conservation Area). Refused 17th December 2012.

2012/93022 – Change of use of children's nursery to 2 student apartments and re-roofing (within a Conservation Area). Approved 26th November 2012.

2012/92926 – Discharge of condition 3 & 4 on previous permission 2012/91111 for formation of car park (within a Conservation Area). Approved 8th November 2012.

2012/91171 – Change of use from day nursery to student apartments and reroofing existing roof (within a Conservation Area). Approved 10th July 2012.

2012/91111 – Formation of car park (within a Conservation Area). Approved 7th June 2012.

92/00376 – Change of use of vacant mill to children's play centre plus keep fit classes. Approved 3rd March 1992.

91/05580 – Change of use from retain and wholesale of carpets and furniture to auction house. Approved 28th January 1992.

Enforcement

COMP/10/0471 – Alleged unauthorised metal canopy. Breach regularised.

Representations

Final publicity date expires:

Neighbour Letters – Expired 8th August 2023.

Site Notice – Expired 3rd August 2023.

Press Notice – Expired 11th August 2023.

8 objections have been received; comments are summarised below.

- The proposed cabin will impact on a number of period properties and will spoil the character of the area.

Officer note: Noted. This is discussed in more detail within the visual amenity section of this report.

- Concerns in regard of increased traffic, parking problems and highway safety, a further application (2023/91886) has been submitted in the same car park which is to be used for parking for these apartments.

Officer note: Noted. The Council's Highways Team have been consulted, their comments can be found within the consultation responses and highway safety sections of this report.

- Concerns in respect of noise, littering, odour and vermin.

Officer note: Noted. The Council's Environmental Health team have been consulted on the proposals, their comments can be found under the consultation responses and residential amenity sections of this report.

- The present owner has made no attempt in keeping this area clean and tidy over the years, why start now.

Officer note: Noted.

- Concerns in regard to the loss of privacy.

Officer note: Noted. This is discussed in more detail within the residential amenity section of this report.

- Previous permission on this site has been refused for a 24 hour/7 days a week/365 days a year taxi rank.

Officer note: Noted.

- The proposed confectionary and drinks cabin is located between Birkby infants and Birkby Juniors School, concerns raised for the safety of pedestrians.

Officer note: Noted. Highways Officers have been consulted on the proposals, their comments can be found within the consultation responses and highways safety sections of this report.

- There are already drinks and confectionary shops very close by. Continental (on the corner of this land) and ARO on St. Johns Road, plus shops on Blacker Road.

Officer note: Noted. However, each planning application must be based on its own merits.

- This land was purchased from the Kirklees on a conditional basis to provide car parking for the apartments at Bay Hall Works, refer to the planning applications: 2020/62/91126/W, 2012/62/93022/W, 2012/62/91171/W, 2014/62/92996/W, 2011/62/92878/W.

Officer note: Noted. This has been raised with the Council's Highways Officers who have been consulted on the proposals. Their comments can be found under the consultation responses and highway safety sections of this report.

Officer note: The application has been advertised by site notice and press notice in line with the legal statutory publicity requirements, as set out at Table 1 in the Kirklees Development Management Charter. This is due to the site being located within Birkby Conservation Area and being adjacent to Grade II Listed Buildings.

Consultation Responses

KC Highways Development Management – Comments received 16th August 2023. Object to the proposals.

KC Environmental Health – Comments received 13th July 2023. No objections in principle but do request additional information in respect of drainage, water supply and toilet provision. Conditions and informatives are also recommended in relation to noise and hours of operation, odours, construction noise, contaminated land and electric vehicle charging points.

Officer note: Following receipt of the above comments the applicant's agent sought to respond by noting that as the unit is to sell tea, coffee and snacks to takeaway there is no requirement for flues etc. since food is generally reheated via predominantly a microwave. Equipment is generally low scale, whereby a water supply exists on site which will provide wash facilities etc. the site would benefit from the proposals as it will be maintained and cleared. The agent also notes that the proposed operating hours would be prejudicial to operating, stating that the staff would monitor the site ensuring that customers enter and leave the site without affecting neighbours.

The Council's ENVH Officers were re-consulted on the above comments and noted that from reviewing the new information received via email dated the 15th of August 2023, they are unaware of the approved working practices that have been referenced by the applicant's agent, and whilst staff may be able to exert some control over customers inside the building it is improbable that they would supervise their exit from the wider site. Their recommended condition in relation to hours of operation therefore remains. In terms of odours, their previous recommendation also remains as it is a preventive condition to ensure that no future odours arise at the site should cooking or reheating food result in loss of amenity. Moving on to water supply, the agents' comments give no details as to the safety of the supply, it could be a garden hose from an existing property, which would not necessarily provide a wholesome supply of drinking water. Therefore, this comment and recommendation remains.

Given the conclusions drawn within the visual amenity/heritage and highways sections of this report, Officers have not sought to go back to the agent on this occasion, and instead have sought to move the application towards

determination. Nevertheless, should any subsequent application come forward at this site, I would draw the applicant's attention to the comments received from ENVH to ensure that the above details are submitted from the outset.

KC Conservation & Design – Informal comments received 4th August 2023. Object to the proposals as the cabin would directly affect the setting and significance of the adjacent Grade II Listed Buildings to the east and the character and appearance of the Birkby Conservation Area.

KC Ecology Unit – Comments received 9th August 2023. No objections.

Parish/Town Council

N/A.

Local Ward Members

None.

Planning Policy Background

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 27th February 2019).

The application site is located within the Birkby Conservation Area and a Bat Alert Area. It is also important to note that part of the site falls within Birkby Local Centre and there are Grade II Listed Buildings located to the east.

Kirklees Local Plan (LP):

- **LP1** – Presumption in favour of sustainable development
- **LP2** – Place shaping
- **LP3** – Location of new development
- **LP7** – Efficient and Effective Use of Land and Buildings
- **LP13 –** Town Centre Uses
- **LP16 –** Food and Drink Uses and the Evening Economy
- **LP21** – Highway safety and access
- **LP22** – Parking
- **LP24** – Design
- **LP26** – Renewable and Low Carbon Energy
- **LP28** – Drainage
- **LP30** – Biodiversity and geodiversity
- **LP35** – Historic Environment
- **LP43 –** Waste Management Hierarchy
- **LP47 –** Healthy, Active and Safe Lifestyles

- **LP51 –** Protection and Improvement of Local Air Quality
- **LP52 –** Protection and Improvement of Environmental Quality
- **LP53 –** Contaminated and Unstable Land

Other Guidance Documents:

- Kirklees Highways Design Guide (2019)
- Waste Management Design Guide for New Developments (Version 5, October 2020)
- Biodiversity Net Gain in Kirklees Technical Advice Note (2021)
- Kirklees Climate Change Guidance for Planning Applications (2021)

National Polices and Guidance:

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) updated 20th July 2021, the Planning Practice Guidance Suite (PPGS) first launched 6th 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. Most specifically in this instance, the below chapters are of most relevance:

- **Chapter 2 –** Achieving sustainable development
- **Chapter 4 –** Decision-making
- **Chapter 5 –** Building a strong, competitive economy
- **Chapter 7 –** Ensuring the vitality of Town Centres
- **Chapter 8 –** Promoting Healthy and Safe Communities
- **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

Summary of Principal Planning Issues

The following matters are considered in the assessment below -

1) Principle of development
1) Impact on visual amenity
2) Impact of the proposed development upon the privacy and amenity of neighbouring properties
3) Impact on highway safety
4) Other matters
5) Conclusion

1 - Principle of Development:

Paragraph 7 of the National Planning Policy Framework states that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 goes onto note that achieving sustainable development has three overarching objectives (social, environment and economic), and these are interdependent and need to be pursued on mutually supportive ways.

In line with the National Planning Policy Framework, Policy LP1 of the Kirklees Local Plan declares that:

"…the council will take a positive approach that reflects the presumption in favour of sustainable development contained in the NPPF."

Policy LP2 of the Kirklees Local Plan states: *"All development proposals should seek to build on the strengths, opportunities and help address challenges identified in the Local Plan, in order to protect and enhance the qualities which contribute to the character of these places, as set out in the four sub-area statement boxes set out in the Local Plan."*

The site is within the Huddersfield Sub Area. The listed qualities will be considered where relevant later in this assessment.

The site is partially within the designated Birkby Local Centre, the proposed cabin itself will be wholly located within the Local Centre.

Paragraph 86 of the NPPF states that: "*Planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation."*

Policy LP13 of the Kirklees Local Plan states that: "*Proposals that have a significant adverse impact on the vitality and viability of a centre or compromise the role and function of a centre will not be supported." Policy LP13 notes that the role and function of Local Centres is to 'provide for top-up shopping and local services particularly food and drink'.*

Policy LP16 of the Kirklees Local Plan states that:

Proposals for food and drink, licensed entertainment uses and associated proposals will be supported, provided they are located within a defined centre, and subject to:

• ensuring the concentration of food and drink and licensed entertainment uses are not located in a particular centre or part of a centre, where they would result in harm to the character, function, vitality and viability of the centre, either individually or cumulatively.

In order to assess the potential harm of food and drink and licensed entertainment proposals on a centre, the following criteria will be considered with a planning application:

a) the number, distribution and proximity of other food and drink uses, including those with unimplemented planning permission in a particular centre;
b) the impacts of noise, general disturbance, fumes, smells, litter and late night activity, including those impacts arising from the use of external areas;
c) the potential for anti-social behaviour to arise from the development, having regard to the effectiveness of available measures to manage potential harm through the use of planning conditions and / or obligations;
d) the availability of public transport, parking and servicing;
e) highway safety;
f) the provision of refuse storage and collection; and
g) the appearance of any associated extensions, flues and installations."

In relation to Policy LP16 of the Kirklees Local Plan, the supporting text for the policy states that 'food and drink uses for the purpose of this policy are defined as Use Classes AA, A3, A4 and A5.' Since the adoption of the Kirklees Local Plan, Class A was revoked (from 1 September 2020), and Class A 1/2/3 were effectively replaced with Use Class E(a,b,c), whilst A4/5 uses were not covered by Use Class E and became defined as 'Sui Generis'. It is noted that the application is for Class E(a), which effectively replaced Use Class A1, therefore Local Plan Policy LP16 is not considered highly relevant in the assessment of this application, although some of the criteria within the policy outline some important material considerations for such an application.

The proposal would introduce a new main town centre use within a designated local centre, therefore it is considered that the proposal would not compromise the role or function of the Local Centre, nor would it adversely impacts its vitality or viability.

The proposal is therefore considered to be in accordance with Policy LP13 of the Kirklees Local Plan. Therefore, the principle of development could be acceptable, subject to the assessment of other impacts, including the impacts on visual and residential amenity, as well as highway safety and other impacts that may arise. These matters will be discussed below.

2 – Impact on Visual Amenity and Heritage Assets:

The NPPF offers guidance relating to design in Chapter 12 (achieving well designed places) whereby paragraph 126 provides a principal consideration concerning design which states:

"The creation of high-quality beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities".

Kirklees Local Plan Policies LP1, LP2 and significantly LP24 all also seek to achieve good quality, visually attractive, sustainable design to correspond with the scale of the development in the local area, thus retaining a sense of local identity.

Policy LP24 states that all proposals should promote good design by ensuring the following:

"a. the form, scale, layout and details of all development respects and enhances the character of the townscape, heritage assets and landscape…".

Section 66 of the Planning (Listed Buildings & Conservations Areas) Act (1990) states that for development which affects a listed building or its setting, the local planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

Section 72 of the Planning (Listed Buildings & Conservation Areas) Act (1990) requires that special attention shall be paid in the exercise of planning functions to the desirability of preserving or enhancing the appearance or character of the Conservation Area.

Sections 66 and 72 of the Planning (Listed Building & Conservation Areas) Act (1990) are mirrored in Policy LP35 of the Kirklees Local Plan and Chapter 16 of the National Planning Policy Framework.

Furthermore, LP35 states that: "*development proposals affecting a designated heritage asset…should preserve or enhance the significance of the asset. In cases likely to result in substantial harm or loss, development will only be permitted where it can be demonstrated that the proposals would bring substantial public benefits that clearly outweigh the harm.".*

Paragraph 199 of the NPPF states: "When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation…". This is further supported by paragraph 202 of the NPPF outlines that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this weight should be weighed against the public benefits of the proposal.

The application site is located within Birkby Conservation Area and is adjacent to a number of Grade II Listed Buildings to the east.

The proposal is for the erection of a drinks and confectionary cabin within an existing hardstanding car parking area, which is bounded by a dry-stone wall and timber fencing. The cabin is to be orientated so that it faces east, towards adjacent Grade II Listed Buildings. The nature of the cabin is utilitarian and functional in design, finished in natural timber cladding.

Following informal discussions with the Council's Conservation & Design Officer it was concluded that the cabin is to be located in a prominent and openly visible location, set directly within the eyeline of the adjacent heritage assets. These Grade II Listed Buildings to the east are considered to be directly affected by the proposals, and given their traditional appearance and that they date back to the 16th century and form part of the historic settlement, the proposed 'timber box' is not considered to bare any resemblance to adjacent structures and would appear visually jarring within the streetscene.

Whilst it is acknowledged, as outlined within paragraph 207 of the NPPF, that not all elements of a Conservation Area will contribute to its significance, and that the application site as existing could be argued to be one such element. Officers consider the introduction of a confectionary cabin in this location would not preserve or enhance the Conservation Area and would in fact detract from it, causing less than substantial harm. No clear or convincing evidence has been provided to justify the works which would have a negative impact to the character and appearance of the Conservation Area and adversely impact on the setting and significance of Grade II Listed Buildings. Therefore it is concluded that the requirements of LP35 of the Kirklees Local Plan and Paragraph 202 of the NPPF have not been met on this occasion.

For the reasons outlined above, the proposed introduction of a cabin in this openly visible and prominent location would result in an unsympathetic, incongruous and overly dominant form of development within the Birkby Conservation Area and would disrupt views towards adjacent Grade II Listed Buildings found to the east of the site. No convincing justification has been provided for the proposed development and therefore the proposals are considered to harm the visual amenity of the area and cause less than substantial harm to both the significance of the Birkby Conservation Area and setting of the adjacent Grade II Listed Buildings (9 Bay Hall and 23 & 25 Miln Road). There are considered to be no public benefits that outweigh such harm. The proposal would therefore be contrary to Policies LP1, LP2, LP24a and LP35 of the Kirklees Local Plan, Chapters 12 and 16 of the NPPF and Sections 66 and 72 of the Planning (Listed Building and Conservation Areas) Act.

3- Impact on Residential Amenity

Sections B & C of the Kirklees Local Plan Policy LP24 which states that alterations to existing buildings should:

"maintain appropriate distances between buildings' and '…minimise impact on residential amenity of future and neighbouring occupiers'.

Further to this, paragraph 130 of the National Planning Policy Framework states that planning decisions should ensure that developments have a high standard of amenity for existing and future occupiers.

The proposed cabin is proposed to be installed adjacent to the western boundary of the site which is bounded by a dry stone wall, with timber fencing

also provided on the inside of the wall for extra security. Whilst the cabin would be in close proximity to no. 14 Common Road (to the north), the cabin would be orientated to look out across the car park to the east and therefore would not look towards the window located within the southern elevation of this residential property. Nevertheless, this window is obscurely glazed. In addition, the site is adjacent to no. 1 Common Road and no. 64 St. Johns Road which are both located to the north-west of the site. Again, the cabin is to have its back to these properties and has no windows proposed within its western elevation.

Overall, it is considered that this cabin, which would be of a single storey scale, would be sufficiently sited so as to prevent undue harm to any neighbouring residential properties in terms of loss of light, overlooking or overshadowing, or the creation of an overbearing effect.

Paragraph 185 of the NPPF outlines that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects of pollution on living conditions. In addition to this, Policy LP52 of the Kirklees Local Plan states that proposals which have the potential to increase pollution from noise, vibration, light, dust, odour and other forms of pollution must be accompanied by evidence to show the impacts have been evaluated and measures have been incorporated to prevent or reduce the pollution, so as to ensure it does not reduce the quality of life and well-being of people to an unacceptable level or have unacceptable impacts on the environment.

In terms of noise and odour, the Council's Environmental Health Officer has raised concerns in respect of these matters and have requested a plethora of conditions relating to the restriction of opening hours at the site (limited to 6pm Monday to Saturday and 4pm Sundays and Bank Holidays), restricted noise levels, a restricted use class to ensure that only hot beverages and cold/ready to eat foods are sold at the premises, this is in the interests of residential amenity, given the site's close proximity to adjacent residential properties.

Third party comments in relation to vermin and littering have been noted. It is considered that through adequate bin storage and collection arrangements this matter could be addressed. As details of bin storage are relatively limited at the moment (as highlighted below in the highways safety section of this report), further details of this can be conditioned to address this matter, should planning permission be granted.

Thus, subject to conditions, it is considered that the proposal could prevent undue harm to the amenities of surrounding neighbouring properties in accordance with Policies LP24(b) and LP52 of the Kirklees Local Plan and Chapters 12 and 15 of the NPPF. However, the applicant would not accept the hours of use restrictions as recommended by Environmental Health. The proposed late closing times of 11pm/10pm would result in undue noise and disturbance from comings and goings of customers in a primarily residential setting. For this reason, the operation of the cabin would cause material harm

to the amenities of residential occupiers, contrary to Policy LP24b, LP52 of the Kirklees Local Plan and Policies within Chapter 15 of the NPPF.

4 - Impact on Highway Safety:

Turning to highway safety, Local Plan Policies LP21 and LP22 are relevant and seek to ensure that proposals do not have a detrimental impact on highway safety and provide sufficient parking. Paragraph 111 of the NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

The application site relates to a car park located between Common Road and Miln Road in Birkby. Given the nature of the proposals the Council's Highways Officers were consulted. They note that the car park which is subject to this application has been shown within the red line boundary for 3 previous applications as follows:

1. 2012/91171 - Change of use from Day Nursery to student apartments at Bay Hall Works, 2, Miln Road, Birkby, Huddersfield
1. 2012/91111 -formation of a car park on land adjacent to 14 Common Road
2. 2013/93729 Change of use from shop/office to daycare centre/nursery/play gym at 12 A Common Road

2012/91171 included condition 6 requiring 4 car parking spaces for the occupiers of the student accommodation within the car park.

6. Notwithstanding the submitted details, a car park management plan demonstrating how 4 no. car parking spaces for the occupiers of the student accommodation hereby approved shall be provided and thereafter retained on land within the control of the applicant adjacent to 14 Common Road shall be submitted to and approved in writing by the Local Planning Authority before development commences. The car park shall then be operated in accordance with the approved management plan with the provision of 4 no. car parking spaces for the occupiers of the student accommodation throughout the life me of the development.

2012/91111

The highways consultation response was as follows:
The proposal is for the formation of a car park on land adjacent to No.14 Common Road. The idea is to use this land to provide approximately 10/11 parking spaces for a current application 2012/91171 that is for the change of use of a day nursery at no 2 Miln Road to student apartments. As stated in the Design and Access statement 'the applicant is in the process of purchasing the land and the planning application is to formalise its use as a surface car park.' 'The intention is that the site will provide off road parking to serve the proposed development/regeneration of the adjacent site in the applicant's ownership.'

2013/93729 included condition 7.

7. Notwithstanding the submitted details, a car park management plan demonstrating how 4 no. car parking spaces for the occupiers of the student accommodation above the nursery and play gym shall be provided and thereafter retained within the under-croft car park off Common Road, shall be submitted to and approved in writing by the Local Planning Authority before the use is first commenced. The under-croft car park shall then be operated in accordance with the approved management plan with the provision of 4 no. car parking spaces for the occupiers of the student accommodation throughout the life me of the development.

Section 14 of the application form refers to the site NOT being currently vacant and then describes the use as Vacant car parking and Bin Store.

Given that previous applications for student accommodation and daycare centre/nursery/play gym show this car park within the red line boundary and there is no other off-street parking available Highways Development Management would recommend refusal of these proposals. The authorised use of this car park would not provide facilities for parking associated with the cabin.

For the reasons outlined above, it is considered that it has not been demonstrated that the scheme could provide sufficient off-street parking for the existing and future uses proposed at this site. This would therefore result in an intensification and displacement of on-street parking within the immediate area. The proposals would therefore have a detrimental impact upon highway safety and be contrary to Policies LP21 and LP22 of the Kirklees Local Plan, Policies contained within Chapter 9 of the NPPF and the Kirklees Highways Design Guide SPD.

5 - Other Matters:

Biodiversity

Paragraphs 174, 180, 181 and 182 of Chapter 15 of the National Planning Policy Framework are relevant, together with the Conservation of Habitats and Species Regulations 2017 which protect, by law, the habitat and animals of certain species including newts, bats and badgers.

Policy LP30 of the Kirklees Local Plan echoes the NPPF in respect of biodiversity. Policy LP30 outlines that development proposals should minimise impacts on biodiversity and provide net biodiversity gains through good design by incorporating biodiversity enhancements and habitat creation where opportunities exist.

The Council's Ecologist was consulted on the proposals and raised no objections as the site provides minimal ecological value, being completely dominated by hardstanding.

Water supply

KC Environmental Health have stated that prior to determination of the application, information about the provision of drinking water should be provided. Whilst this concern is noted, the provision of clean water is controlled by other legislation and it is not considered necessary or reasonable to request further information in relation to this under this planning application.

Drainage

KC Environmental Health have stated that a scheme to demonstrate connection of the foul sewerage system should be provided prior to determination of the application. However, it is considered that this matter could be addressed via an appropriately worded condition so as to ensure the provision of an adequate and sustainable system of drainage are employed.

Climate Change

On 12th November 2019, the Council adopted a target for achieving 'net zero' carbon emissions by 2038, with an accompanying carbon budget set by the Tyndall Centre for Climate Change Research. National Planning Policy includes a requirement to promote carbon reduction and enhance resilience to climate change through the planning system and these principles have been incorporated into the formulation of Local Plan policies. The Local Plan pre-dates the declaration of a climate emergency and the net zero carbon target, however it includes a series of policies which are used to assess the suitability of planning applications in the context of climate change. When determining planning applications, the Council will use the relevant Local Plan policies and guidance documents to embed the climate change agenda.

The application is supported by a Climate Change Statement, this statement outlines that the cabin is to be delivered to site as a complete and finished item and will utilise a reclaimed storage container which is to be converted to form a sales unit. The cabin will be totally self sufficient and will use minimal resources.

In addition, and in accordance with Government guidance on air quality mitigation, outlined within the NPPG and Chapter 15 of the NPPF, and local policy contained within LP24 and LP51 and the West Yorkshire Low Emission Strategy Planning Guidance seeks to mitigate Air Quality harm. Given the scale and nature of the development officers would seek the provision of electric vehicle charging points should planning permission be granted. The purpose of this is to promote modes of transport with low impact on air quality. In addition, the proposal is for a timber-clad cabin which is somewhat temporary in nature and therefore it is not considered reasonable to expect any additional information to be submitted in respect to meeting the Council's climate change agenda in this instance.

There are no other matters for consideration.

6 - 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 that; the proposed development would not constitute sustainable development and is therefore recommended for refusal.

Recommendation:

Refuse.

Decision Authorisation - Delegated Powers

Application Number: 2023/91886

Officer Recommendation: Refuse.

Reasons for Refusal:

1. The proposed introduction of a cabin in this openly visible and prominent location would result in an unsympathetic, incongruous and overly dominant form of development within the Birkby Conservation Area and would disrupt views towards adjacent Grade II Listed Buildings found to the east of the site. No convincing justification has been provided for the proposed development and therefore the proposals are considered to harm the visual amenity of the area and cause less than substantial harm to both the significance of the Birkby Conservation Area and setting of the adjacent Grade II Listed Buildings (9 Bay Hall and 23 & 25 Miln Road). There are considered to be no public benefits that outweigh such harm. The proposal would therefore be contrary to Policies LP1, LP2, LP24a and LP35 of the Kirklees Local Plan, Chapters 12 and 16 of the National Planning Policy Framework and Sections 66 and 72 of the Planning (Listed Building and Conservation Areas) Act 1990.

1. The proposals have not demonstrated that the scheme could provide sufficient off-street parking for the existing and future uses, taking into account the existing authorised use of this car park to serve other development. This would result in an intensification and potential displacement of on-street parking within the immediate area. This would have a detrimental impact upon highway safety and be contrary to Policies LP21 and LP22 of the Kirklees Local Plan, Policies contained within Chapter 9 of the National Planning Policy Framework

and the Kirklees Highways Design Guide SPD.

2. The proposed hours of use of the cabin would cause material harm to the amenities of nearby residential occupiers by undue noise and disturbance from comings and goings at unsocial hours. This is contrary to Policies LP24b and LP52 of the Kirklees Local Plan and Chapter 15 of the National Planning Policy Framework.

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Site Location Plan & Block/Site Plan	-	-	29th June 2023
Cabin Elevations & Details	-	-	29th June 2023
Climate Change Statement – Supporting Information	-	-	29th June 2023
Heritage Statement – Supporting Information	-	-	30th June 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 preapplication advice service available, complied with the Kirklees Development Management Charter 2015 and otherwise actively engaged with the applicant in dealing with the application. No amendments have been sought in this instance as the proposals are deemed to be wholly unacceptable upon submission. The comments of the applicant's agent regarding the restrictions on hours of use were given due consideration, but could not be accepted.

Report Dated:

16th August 2023.