

**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:	2024/70/90088/W
Site Address:	The Bungalow, 77, Holmfirth Road, Meltham, Holmfirth, HD9 4DA
Description:	Variation condition 1 (Time Limit) on previous permission 2017/91284 for retention of existing modular building and the erection of single storey rear extension (portakabin)
Recommending Officer:	Laura Yeadon

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: 12-Mar-2024

Officer Report

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2024%2f90088>

Site Description

The Bungalow, 77 Holmfirth Road, is located alongside Meltham C of E Primary School, which operates separately to the school. It is faced in brick with a felt double pitched roof with a central ridge. The principal elevation faces south, onto a play area. Access to the site is from Holmfirth Road further to the south. To the building's rear is a small, grassed area. Adjacent to the north-east of the grounds is a blanket Tree Preservation Order.

The planning history of the building indicates that the building was converted from a caretakers house to the pre-school playground under a 2009 planning permission.

To the east and south east of the site is Meltham C of E Primary School and to the north north and north-west are residential properties.

Description of Proposal

The application has been submitted under Section 73 of the Town and Country Planning Act 1990 (as amended), this application seeks permission for the variation of Condition 1 referring to the time limit to an approved application, originally approved under number 2017/91284 for the retention of the existing modular building and the erection of a single storey rear extension (portakabin). Condition 1 detailed that:

“No later than 13-June-2022, the modular provision hereby permitted, shown hatched on plan ref: ‘Block/Layout Plan 1:100, plan ref: MPG/1Rev.A’, shall be removed from the application site; the application site being delineated by the red line on ‘Block Plan, 1:500 plan ref: MPG/2’.”

Under application number 2022/90558 permission was sought to extend the permission for the time scale for another two years and this application was assessed and subsequently approved. As such, the time limit for the removal of the buildings was extended to 19th May 2024.

The submitted information states that:

‘The proposed replacement permanent classroom granted 30 July 2020 (2020/90787) has been delayed by the Covid pandemic and cost implications and is due to take place in 2026 now. ‘

The reason for varying the condition is noted as follows:

'Condition 1 change 13th June 2026 an extension of time of 2 years from the previous extension of time (2022/90558)'

The previous Officer Report under application under 2022/90558 states that:

The 2017 application was for the existing modular building on site, to be retained, which is 9.8m wide and 6.85m deep. It has a flat roof 2.8m in height.

The proposed additional extension (porta cabin) would project from the existing porta cabin's rear elevation. It projects 2.7m and 6.8m wide, set in from the side elevations of the larger porta cabin by 1.65m with a flat roof 2.8m in height. The additional space would provide a 'quiet space' for children and will not translate to additional jobs or children on site.

In 2020, an application was approved for the existing portacabin to be replaced with a permanent structure, this building would be a brick structure following the existing footprint, which is 9.7m wide and 6.15m deep with a shallow pitched roof at a height of 3.4m similar to the existing building.

It is noted that the 2020 application for the extension to replace the portakabin with a permanent structure expired on 29th July 2023 and therefore this permission has now lapsed. A new application for planning permission would be required to implement this scheme as it would not fall within the remit of this application as Condition 1 of the permission is a standard condition and not a temporary permission that can be varied under the scope of this permission.

History of negotiations/amendments received

No negotiations have taken place with the applicant/agent due to the application being acceptable in its submitted format.

Relevant Planning History

2009/92231 Change of use and extension to former Caretaker's house to Pre-school playgroup
Conditional Full Permission

2011/90582 Erection of classroom extension (portacabin)
Conditional Full Permission

2013/91260 Erection of conservatory
Conditional Full Permission

2013/91835 Works to TPO(s) 13/95
Granted

2014/91725 Works to TPO(s) 13/95
Granted

- 2014/92114 Erection of single storey extension
Conditional Full Permission
- 2017/91284 Retention of existing modular building and the erection of a single storey rear extension (portakabin)
Conditional Full Permission
- 2017/91869 Work to TPO(s) 13/95
Part Granted/Part Refused
- 2017/92402 Work to TPO(s) 13/95
Granted
- 2020/90787 Erection of classroom extension to replace temporary classroom
Conditional Full Permission
- 2020/93982 Work to TPOs 13/95
Granted
- 2022/90558 Variation of condition 1 (time limit) on previous permission 2017/91284 for retention of existing modular building and the erection of single storey extension (portakabin)
Granted

Representations

We are currently undertaking the legal 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.

Final publicity date expired 29th February 2024

Meltham Town Council – no response to date

As a result of the public consultation period no representations have been received

Consultation Responses

K.C. Arboricultural officer – no objection

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 27th February 2019).

The site is within Urban Greenspace on the Kirklees Local Plan. Policies considered relevant in the consideration of an application for this site relate to the following:

Kirklees Local Plan:

- **LP 1**– Achieving sustainable development
- **LP 2** – Place shaping
- **LP 21** – Highways safety
- **LP 22** - Parking
- **LP 24** – Design
- **LP 30** - Biodiversity and geodiversity
- **LP 33** – Trees
- **LP61** – Urban Greenspace

National Policies and Guidance:

National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF) published 20th December 2023, 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.

- Chapter 2 – Achieving sustainable development
- Chapter 4 – Decision-making
- Chapter 8 – Promoting healthy and safe communities
- Chapter 12 – Achieving well-designed and beautiful places
- Chapter 14 – Meeting the challenge of climate change, flooding & coastal change.
- Chapter 15 – Conserving and enhancing the natural environment

Assessment

Principle of development:

Section 73 of the Town and Country Planning Act 1990 allows for the variation or removal of a condition of a previous permission.

The principle of development for the modular building and the erection of the portakabin was established under planning permission 2017/91284 and an application to extend the time period for the retention of these buildings was granted approval under application 2022/90558.

As such, the principle of the development has been established by way of the above 2017 and 2022 applications. As there are no proposed physical changes to the site as part of this application, there would be no further

development within the Urban Greenspace and therefore the application would not be a departure from Policy LP61 of the Kirklees Local Plan.

Impact on amenity:

Policy LP24 of the Kirklees Local Plan and advice within Chapter 12 of the National Planning Policy Framework seeks to ensure that development has an acceptable impact on both visual and residential amenity.

As noted within the previous applications for the works, the impact of the existing portakabins have been assessed within application numbers 2011/90582 and 2017/90787. The Officer Report for the 2022 application cites that the previous assessment concluded that the works would not be harmful from being overbearing, from overshadowing or overlooking or from noise pollution to the neighbouring dwellings. In addition there has been no further development at the neighbouring properties to alter the view of the previous assessments.

Condition 1 of the 2017 application imposed a temporary permission of five years. The reason for imposing this condition was due to the buildings being portakabins and therefore considered to be temporary materials which would not be considered on a permanent basis on the site. The reason on the decision notice cites that the application was assessed taking into account the public benefits of supporting the pre-school against the short term impact on visual amenity and that the portable classroom units were only acceptable for a limited period of time due to the impact on visual amenity.

Whilst the previous scheme was granted a two year extension to the time limit and this current proposal requests a further two years, the application form is clear in that the permanent building which was approved in 2020 has been delayed due to the Covid pandemic and will now take place in 2026. As such, the existing buildings are required for the continuation of the pre-school. Whilst it is noted that the 2020 application has now lapsed for the erection of a class room extension, the buildings which are on site are considered to be acceptable in terms of visual amenity and by extending the time limit for their removal will not cause increased harm to neighbouring residents over and above the existing situation at the site.

Highway safety:

There are no changes to the existing layout of the site and therefore no parking spaces would be lost or gained.

It is not considered that there would be any harm to or from highway safety as a result of the retention of the buildings for a further two years of being in situ.

Other matters:

Climate Change - Principle 8 of the Kirklees House Extensions and Alterations SPD states that extensions and alterations should, where

practicable, maximise energy efficiency. Principle 9 goes on to highlight that the use of innovative construction materials and techniques, including reclaimed and recycled materials should be used where possible. Furthermore, Principles 10 and 11 request that extensions and alterations consider the use of renewable energy and designing water retention into the proposals.

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.

Due to the limited nature of the development proposed, it is not considered that specific mitigation measures are required to facilitate this development.

Trees – no objections have been raised by the Council's Arboricultural Officer.

Coal legacy – The site is located within the Coal Authority's "Development Low Risk Area". There is no statutory requirement to consult the Coal Authority regarding development within the "Development Low Risk Area", instead an informative note can be appended to the decision notice which constitutes the deemed consultation response. The application site falls within an area at low risk of ground movement as a result of past mining activities as determined by the Coal Authority. As such it is considered that it is unnecessary in this case to require a survey of land stability to be carried out with regard to previous mining activity which may have taken place within the locality. It is recommended that the Coal Authority's standing advice is provided with any grant of approval. As such it is considered that the proposal is acceptable with regard to ground stability in accordance with paragraphs 186 and 191 of the National Planning Policy Framework.

Representations:

None

Review of conditions

Where a grant of approval of a Section 73 application, a new consent is issued by the LPA and therefore all such all conditions from the original planning consent are required to be reviewed and where necessary, re-applied or amended. This section sets out a review of the conditions upon the consent number 2017/91824.

Condition 1 – Time limit:

1. *No later than 13-June-2022, the modular provision hereby permitted, shown hatched on plan ref: 'Block/Layout Plan 1:100, plan ref: MPG/1Rev.A', shall be removed from the application site; the application site being delineated by the red line on 'Block Plan, 1:500 plan ref: MPG/2'.*

Reason: *The application relates to buildings constructed of temporary materials which are such as would not be acceptable on a permanent basis on this site. The application has been assessed taking into account the public benefits of supporting the pre-school against the short term impact on visual amenity. The portable classroom units are only acceptable for a limited period taking into account these factors and to accord with Chapters 7 and 8 of the National Planning Policy Framework and Policies D3, BE1 and BE2 of the Unitary Development Plan.*

The previous 2022 permission extended this time period to 19th May 2024. As such a further two years time period for the date of this permission shall be imposed.

Condition 2 – Development to be in accordance with the submitted details:

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 D3, BE1 and BE2 of the Kirklees Unitary Development Plan.*

This condition is required to be re-imposed for the avoidance of doubt.

Condition 3 – proximity to protected trees:

3. *Details of any additional tree works required during the construction process, not already identified within the submitted information, shall be submitted to and approved in writing by the Local Planning Authority prior to the work being carried out. The works shall thereafter be carried out in complete accordance with the approved details.*

Reason: *To protect trees in the interests of visual amenity and to accord with the requirements of Policy LP33 of the Local Plan and advice within the National Planning Policy Framework.*

This is required to be reimposed to ensure the protection of the protected trees.

Conclusion:

There has been no significant change to the site allocation since the original planning permission was granted. Although the Local Plan was adopted in 2019, this has not fundamentally changed the land allocation or policies affecting this site. 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 imposed on the 14 June 2017 consent (2017/62/91284) being re-imposed on this Section 73 application the proposal is acceptable. It is therefore concluded that the variation to the approved plans proposed under this Section 73 application are acceptable and do not alter the conclusions reached and the recommendation made for application 2017/62/91284.

Recommendation

APPROVE

Decision Authorisation - Delegated Powers

Application Number: 2024/90088

Officer Recommendation: Approve

Conditions:

1. No later than 13th June 2026 the modular provision hereby permitted, shown hatched on plan ref: 'Block/Layout Plan 1:100, plan ref: MPG/1Rev.A', shall be removed from the application site; the application site being delineated by the red line on 'Block Plan, 1:500 plan ref: MPG/2'.

Reason: The application relates to buildings constructed of temporary materials which are such as would not be acceptable on a permanent basis on this site. The application has been assessed taking into account the public benefits of supporting the pre-school against the short-term impact on visual amenity. The portable classroom units are only acceptable for a limited period taking into account these factors and to accord with the aims of Policies LP24 and LP61 of the Kirklees Local Plan.

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 LP61, LP02 & LP24, of the Kirklees Local Plan and advice in the National Planning Policy Framework.

3. Details of any additional tree works required during the construction process, not already identified within the submitted information, shall be submitted to and approved in writing by the Local Planning Authority

prior to the work being carried out. The works shall thereafter be carried out in complete accordance with the approved details.

Reason: To protect trees in the interests of visual amenity and to accord with the requirements of Policy LP33 of the Local Plan and advice within the National Planning Policy Framework

Plans and specifications schedule:-

Plan Type	Reference	Version	Date Received
Location plan and block plan	MPG/2 Block Plan 1:500		19 th April 2024
Grouped plans and elevations	MPG/1	Rev: A	30 th May 2017
Supplementary Information	Design and Access Statement		19 th April 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 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 Case Officer did not undertake any negotiations with the applicant due to the application being acceptable in its submitted format.

Report Dated: 12th March 2024

Coal - low