
Report of the Head of Planning and Development

HEAVY WOOLLEN PLANNING SUB-COMMITTEE

Date: 10-Jun-2021

Subject: Planning Application 2021/90706 Removal of condition 23. on previous permission no. 2013/93186 for demolition of a building and formation of additional coach and bus parking/storage area, with screen planting and amended vehicular access arrangements Arriva Lodge Garage, Whitehall Road West, Hunsworth, Cleckheaton, BD19 4BJ

APPLICANT

ARRIVA Bus and Coach
Ltd

DATE VALID

16-Mar-2021

TARGET DATE

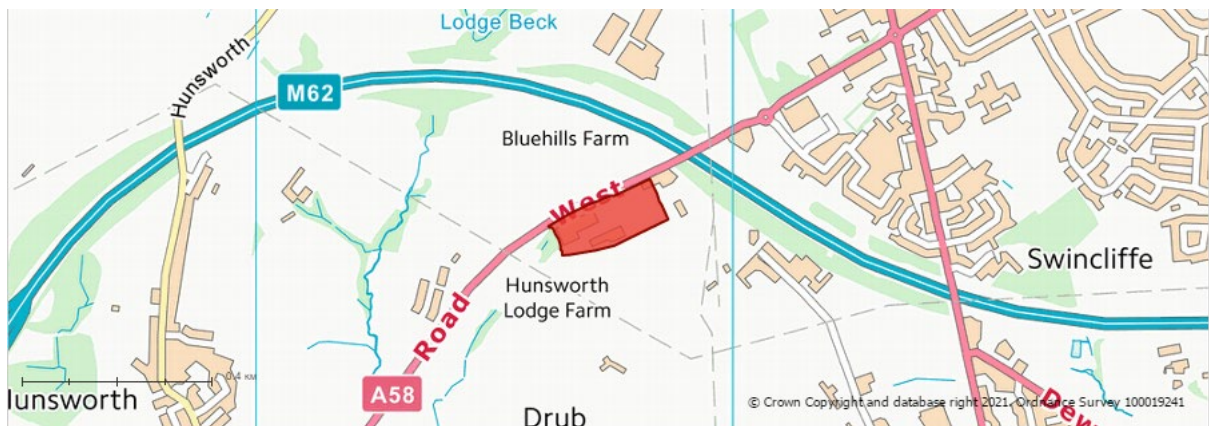
11-May-2021

EXTENSION EXPIRY DATE

Please click the following link for guidance notes on public speaking at planning committees, including how to pre-register your intention to speak.

<http://www.kirklees.gov.uk/beta/planning-applications/pdf/public-speaking-committee.pdf>

LOCATION PLAN



Map not to scale – for identification purposes only

Electoral wards affected: Cleckheaton

Ward Councillors consulted: Yes

Public or private: Public

RECOMMENDATION

DELEGATE approval of the application and the issuing of the decision notice to the Head of Planning and Development to complete the list of conditions including those contained within this report.

1.0 INTRODUCTION

- 1.1 The application seeks to remove a condition imposed on a previous planning permission. The previous planning permission, referenced 2013/93186, approved the demolition of a building and formation of additional coach and bus parking/storage area, with screen planting and amended vehicular access arrangements. This was subject to a personal permission condition (condition 23), authorising the development specific to the applicant and not to ensure for the benefit of the land. This was because the site is within the Green Belt and the development being inappropriate, but Very Special Circumstances being demonstrated which were specific to the applicant. This is the condition sought to be removed.
- 1.2 This application is brought to the Planning Sub-Committee on the request of local ward Councillor Andrew Pinnock. Cllr Pinnock's reason for this is that the condition was originally imposed as a personal permission, due to specific Very Special Circumstances, which justified the development in the Green Belt.
- 1.3 The Chair of Sub-Committee confirmed that Cllr Pinnock's reason for making this request is valid, having regard to the Councillors' Protocol for Planning Committees.

2.0 SITE AND SURROUNDINGS

- 2.1 The site is in commercial use. The west of the site hosts industrial buildings that are one or two storeys in height and faced in red brick. These are predominately commercial garage space, with ancillary office. Along the frontage and central within the site is parking for cars. To the east is a large, surfaced area used for the parking for coaches. This coach parking area is the specific subject of the application.

- 2.2 A landscaped boundary surrounding the site to the east, south and west. Along the north runs Whitehall Road West. The site is within the Green Belt. Beyond the boundary is open agricultural land, although there is a terrace row to the north-east adjacent to the coach parking area. The M62 motorway is located further to the east and north, with the site being circa 1.5km from junction 26.

3.0 PROPOSAL

- 3.1 Permission is sought to remove condition 23 from 2013/93186, which approved:

Demolition of a building and formation of additional coach and bus parking/storage area, with screen planting and amended vehicular access arrangements

Condition 23 is as follows:

23. This permission shall be personal to the applicant only and shall not enure for the benefit of the land.

Reason: The proposal is inappropriate development in the Green Belt and is only acceptable due to the very special personal circumstances demonstrated by the applicant which are required to be retained.

- 3.2 The reason for seeking the removal of the condition is that the former applicant and landowner (Arriva Bus and Coach Ltd) is looking to leave and sell the premises. Another company (Two Way Holdings Ltd) is wanting to occupy the land, with the coach parking area as constructed.

- 3.3 The applicant contends that the condition no longer complies with the six tests of planning conditions, following updates to government guidance on the use of conditions (within Planning Practise Guidance). Therefore, it is requested that the condition be removed.

4.0 RELEVANT PLANNING HISTORY (including enforcement history)

4.1 Application Site

96/93095: Formation of coach park and access road with associated landscaping – Refused

2013/93186: Demolition of a building and formation of additional coach and bus parking/storage area, with screen planting and amended vehicular access arrangements – Conditional Full Permission

2014/92874: Discharge of condition 5 (Site Investigation Report), 11(drainage scheme), 12 (water related infrastructure), 15 (parking areas), 18 (right turn lane), 19 (bat mitigation) and 20 (storage of retained soils) on previous planning permission 2013/93186 for demolition of a building and formation of additional coach and bus parking/storage area, with screen planting and amended vehicular access arrangements – Discharge of Conditions Approved

4.2 Surrounding Area

Land at, Blue Hills Farm

2019/90527: Outline application for the erection of up to 127 dwellings, with details of access – Conditional Outline Permission

5.0 **HISTORY OF NEGOTIATIONS (including revisions to the scheme)**

5.1 Officers initially objected to the proposal and requested more justification for why the condition should be removed. Discussions were held and the applicant provided further details over the intended new site occupier's business operation and consideration of planning policy. Based on this information, officers accepted the proposed removal of condition.

6.0 **PLANNING POLICY**

6.1 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).

[Kirklees Local Plan \(2019\) and Supplementary Planning Guidance / Documents](#)

6.2 The application site is allocated Green Belt in the Local Plan.

6.3 Relevant Local Plan policies are:

- **LP1** – Presumption in favour of sustainable development
- **LP7** – Efficient and effective use of land and buildings
- **LP21** – Highway safety and access
- **LP24** – Design
- **Chapter 19** – Green Belt and open spaces.

[National Planning Guidance](#)

6.4 National planning policy and guidance is set out in National Policy Statements, primarily the National Planning Policy Framework (NPPF), published 19th February 2019, and 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 11** – Making effective use of land
- **Chapter 12** – Achieving well-designed places
- **Chapter 13** – Protecting Green Belt land
- **Chapter 14** – Meeting the challenge of climate change, flooding and coastal change

Climate change

- 6.5 The Council approved Climate Emergency measures at its meeting of full Council on the 16th of January 2019, and the West Yorkshire Combined Authority has pledged that the Leeds City Region would reach net zero carbon emissions by 2038. A draft Carbon Emission Reduction Pathways Technical Report (July 2020, Element Energy), setting out how carbon reductions might be achieved, has been published by the West Yorkshire Combined Authority.
- 6.6 On the 12th of 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 predates 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 would use the relevant Local Plan policies and guidance documents to embed the climate change agenda.

7.0 PUBLIC/LOCAL RESPONSE

Public representation

- 7.1 The application has been advertised as a major development via site notices and through neighbour letters to properties bordering the site. This is in line with the Council's adopted Statement of Community Involvement.
- 7.2 The final public representation period for the application expired on the 15th of April 2021. Three representations were received. The following is a summary of the comments made:
- The development was inappropriate in the Green Belt and remains so. It was only allowed due to the applicant's specific circumstances.
 - A new owner would carry out other forms of business operations.
 - The development was detrimental to the Green Belt, with more coaches parking than expected. This led to more manoeuvring, noise, and pollution.
 - Concerns over the future implications of the removal / amendment of the condition. No new lighting or buildings should be allowed.
 - The removal of the condition will increase the land value: this is the sole purpose of the application.

8.0 CONSULTATION RESPONSES

8.1 Statutory

K.C. Highways: No objection.

8.2 **Non-statutory**

K.C. Environmental Health: No objection.

9.0 **MAIN ISSUES**

- Removal of Condition 23
- Previous Conditions
- Representations

10.0 **APPRAISAL**

10.1 This application is made under S73 of the Town and Country Planning Act 1990, which allows for the '*Determination of applications to develop land without compliance with conditions previously attached*'. In addition to removing conditions, S73 enables the varying of a condition's wording. The effect of a granted S73 application is the issuing of a fresh planning permission. Therefore, all previously imposed conditions should be retained, if they remain relevant: this will be considered in paragraphs 10.13 – 10.18. Conversely, the time limit for development to commence cannot be extended through S73, however in this case the original development has been commenced and completed.

10.2 The starting point for a S73 application is the previously granted planning permission, which must carry significant material weight. However, consideration must first be given to whether any material changes in circumstances have taken place. This includes the policy and local context. In terms of policy 2013/93186 was assessed against the Unitary Development Plan and NPPF2012. Each has since been superseded, by the Kirklees Local Plan and NPPF 2019 respectively. The impact of these policy changes will be considered where relevant within this assessment.

10.3 The national Planning Practise Guidance, a repository of government planning guidance, goes through frequent revisions and updates, in response to various factors such as appeal decisions. Updates to this guidance and whether it impacts upon this application will be considered where relevant.

10.4 For local context, no development within the local area is considered to affect the proposal comparative to the previous application's assessment.

Removal of Condition 23

10.5 The condition makes the approved planning decision a 'personal permission' to the applicant, the company Arriva Bus and Coach Ltd. This was considered necessary as the time as the proposal was inappropriate development within the Green Belt, but Very Special Circumstances which clearly outweighed the harm to the Green Belt were identified that were unique to the Arriva business.

- 10.6 The applicant contends that the same, or comparable, Very Special Circumstances apply to Two Way Holdings Ltd. This includes that the site will continue to operate as existing under new ownership, and secure jobs at the site.
- 10.7 Notwithstanding the submitted details of Very Special Circumstances, the applicant has also submitted that government guidance, available within Planning Practise Guidance (PPG), does not support the use of personal permission conditions for business. The guidance outlines that planning permission should run with the land and it is seldom desirable to provide otherwise. The PPG states:
- A condition limiting the benefit of the permission to a company is inappropriate because its shares can be transferred to other persons without affecting the legal personality of the company.*
- 10.8 This guidance is noted by officers. Regarding the condition's reason, the need to protect the Green Belt, a separate condition was also imposed on 2013/93186 with a similar purpose:
- 22. In the event that the use of the site permitted by this planning permission ceases for a period in excess of 6 (six) months, all storage of vehicles and hard surfacing shall be removed from the site and the site shall be restored in accordance with a scheme which shall have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be fully implemented within 2 months of such approval or within 6 months of the cessation of the permitted use, whichever is the later.*
- Reason:** *So as to ensure that the proposed development would have an acceptable impact upon the openness of the Green Belt and to accord with guidance contained within the NPPF – National Planning Policy Framework.*
- 10.9 Both conditions 22 and 23 serve the same function, albeit through different methods. The function is to ensure the development does not have an undue or lasting impact upon the Green Belt when it is no longer required by the applicant. Reflection on the interplay between these conditions, it is considered that the imposition of one makes the other superfluous, which in turn makes the other neither necessary nor reasonable.
- 10.10 Planning conditions must pass six tests: that they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
- 10.11 Through this S73 application, the LPA is being asked to re-examine the need and reasonableness of this condition. Considering the six tests for conditions and government guidance, and alongside the reassurance provided by the other condition 22 (to be retained), officers conclude that Condition 23 is no longer reasonable or necessary to impose and can also be removed without causing harm to the Green Belt.

- 10.12 Considering other material planning considerations, such as ecology, drainage and highways, the removal of condition 23 is not anticipated to have any detrimental impacts. For residential amenity, as noted above the site will operate similarly to as it has previously operated: it is proposed to retain the previous hours of use condition (no actives in the bus and coach parking area outside of 0800-2000, Monday to Friday, with no actives on Saturdays, Sundays, or Bank Holidays) and limitations on noise generation (when measured from 117 Whitehall Road East). K.C. Environmental Health have confirmed they've received no formal noise complaints about the site.

Previous Conditions

- 10.13 As this is an application under S73 of TCPA 1990 it will in effect be a new permission. The conditions from 2013/93186 should therefore be repeated unless they have already been discharged / fulfilled, in which case they will be re worded where relevant.
- 10.14 Application 2013/93186 was granted with 23 conditions:
1. Time limit to commence development
 2. Development to be done in accordance with approved plans
 3. Limiting activities in the coach parking area to 0800 – 2000, Monday to Friday
 4. Limitation on noise from coach parking area
 5. Submission of a phase 2 contaminated land report
 6. Submission of remediation strategy
 7. Implementation of remediation strategy
 8. Submission of validation report
 9. Surface water to pass through an oil interceptor
 10. Development to be done in accordance with Drainage Assessment
 11. Surface water strategy to be submitted
 12. Assessment of culvert under site
 13. Landscaping to be done in accordance with approved details
 14. Development to be done in accordance with Arboricultural Assessment and Method Statement
 15. Details of surfacing to be approved and implemented
 16. Sightlines to be provided and retained
 17. Details of surfacing to be approved and implemented
 18. Right turn lane to be detailed and provided
 19. Bat mitigation survey to be undertaken and submitted
 20. Details of retained soil to be provided and approved
 21. Soil to be retained on site, in accordance with details of condition 20.
 22. Site to be returned to previous state if not used for a period in excess of six months
 23. Permission for applicant only (sought to be varied)
- 10.15 Conditions 2, 3, 4, 9, 13, and 22 are to be retained as previous imposed as their requirements remain relevant. Conditions 11, 15, 16, and 21 are to be re-worded to reflect information submitted with discharge of condition applications approved after the original application 2013/93186.
- 10.16 The above list notably includes the same hours of use limitation and restriction the level of noise being re-imposed.

10.17 No new physical works are required as they have been undertaken. The following conditions are no longer required, as they initially required submission of details associated with construction which have since been submitted, approved, and implemented without ongoing requirements:

1, 5, 6, 7, 8, 10, 12, 14, 17, 18, 19, and 20.

For clarity and consistency, conditions are not to be re-numbered, therefore each of the removed conditions will include a note 'condition no longer required'.

10.18 Application 2013/93186 was not granted subject to a S106 agreement. Therefore, a S106 Deed of Variation is not required.

Representations

10.19 Three representations have been received to date. The following are matters not previously directly addressed.

- Concerns over the future implications of the removal / amendment of the condition. No new lighting or buildings should be allowed.

Response: Each application is assessed on its own merits. There is considered no intrinsic link between this application and the erection of new buildings or lighting.

- The removal of the condition will increase the land value: this is the sole purpose of the application.

Response: This does not form a material planning consideration.

11.0 CONCLUSION

11.1 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.

11.2 As a S73 application, the principal consideration is the planning implications of the removal of the condition. The condition is no longer considered to comply with the NPPF's six tests for conditions and its usage goes against government guidance. Furthermore, given the similarities between the existing and proposed site operators, and the retention of condition 22 (removal of the development after 6 months of inactivity), the removal is not considered detrimental to the Green Belt.

11.3 This application has been assessed against relevant policies in the development plan and other material considerations. It is considered that the development would constitute sustainable development and is therefore recommended for approval, subject to the reimposition of conditions identified as remaining necessary.

12.0 CONDITIONS (Summary list. Full wording of conditions including any amendments/additions to be delegated to the Head of Planning and Development)

1. *Condition no longer required*
2. Development to be done in accordance with approved plans
3. Limiting activities in the coach parking area to 0800 – 2000, Monday to Friday
4. Limitation on noise from coach parking area
5. *Condition no longer required*
6. *Condition no longer required*
7. *Condition no longer required*
8. *Condition no longer required*
9. Surface water to pass through an oil interceptor
10. *Condition no longer required*
11. Surface water strategy retained, in accordance with details previously approved.
12. *Condition no longer required*
13. Landscaping to be retained, in accordance with details previously approved.
14. *Condition no longer required*
15. Details of surfacing to retained, in accordance with details previously approved.
16. Sightlines to be provided and retained
17. *Condition no longer required*
18. *Condition no longer required*
19. *Condition no longer required*
20. *Condition no longer required*
21. Soil to be retained on site, in accordance with details previously approved.
22. Site to be returned to previous state if not used for a period in excess of six months

Background Papers

Application and history files

Available at:

<https://www.kirklees.gov.uk/beta/planning-applications/search-for-planning-applications/detail.aspx?id=2021%2f90706>

Certificate of Ownership

Certificate A signed.