

DEVELOPMENT CONTROL AND REGULATION COMMITTEE
1 December 2022
A report by the Executive Director for Economy and Infrastructure

Application Reference No. 5/22/9008

Application Type: Section 73 Application to Vary or Remove Planning Conditions

Proposal: Section 73 application to vary conditions 2 and 3, and remove conditions 1, 4 and 7, of planning permission Ref. 5/19/9011 in order to retain the existing temporary facility until 4 December 2023.

Location: Fire Service Equipment Storage Facility (former Archives Store Building Site),
Busher Walk, Kendal, LA9 4RQ

Applicant: Cumbria County Council

Date Valid: 19 October 2022

Reason for Committee Level Decision: Application made by Executive Director for Economy and Infrastructure

1.0 RECOMMENDATION

1.1 That Planning Permission be Granted subject to the conditions set out in Appendix 1 to this report

2.0 THE PROPOSAL

2.1 This planning application principally seeks to retain the existing temporary Fire Service Equipment Storage Facility on the former archives store site at Busher Walk, Kendal for an extended time period of up to one year - i.e., up to 4 December 2023. The applicant's agent explains that some additional time is required for this temporary facility while Cumbria Fire and Rescue Service (CFRS) appraise options for a more permanent storage solution in the context of ongoing Local Government Reorganisation (LGR) – in particular the Tuesday 2 August 2022 decision of the Home Secretary that Cumbria's Police and Crime Commissioner will take on governance responsibility for CFRS from Cumbria's Fire Authority, Cumbria County Council. As part of this appraisal CFRS will be reviewing the recommendations of a Cumbria County Council commissioned feasibility study which focuses on possible alternative locations for the siting of a more permanent Fire Service Equipment Storage solution for CFRS. The applicant's agent adds that funding is currently being sought with the intention of relocating to a permanent fully serviced facility. Furthermore, the agent sets out that regardless of the ongoing review process, it is CFRS' current intention to have operationally vacated the Busher Walk site by June/July 2023. He explains that to facilitate this CFRS may re-purpose existing station space in an alternative location as an interim measure, though it is acknowledged that this is currently subject to further assessment work and subsequent preparation of such a space.

2.2 This application is made under Section 73 of the Town and Country Planning Act 1990 and seeks to vary conditions 2 (Temporary Time Limit) and 3 (Approved Scheme) of planning permission Ref. 5/19/9011, so as to provide a one year time

extension for the retention and operation of this temporary facility and to update the approved plans to reflect the current form and layout of the facility. It is also proposed to remove conditions 1 (Time Limit for Implementation for Permission), 4 (Protection of Trees), and 7 (Encounters with Unsuspected Contamination) as the development has been fully implemented and the construction phase conditions are therefore no longer relevant.

3.0 SITE DESCRIPTION

3.1 The temporary Fire Service Equipment Storage Facility comprises of a number of shipping container structures (finished in a dark green colour), a canopy shelter with a paladin fenced secure compound area and ancillary parking/turning space on an approximately 0.08ha (835m²) parcel of land that is north of County Hall, accessed off Busher Walk opposite the Police Station. Timber knee high boundary fencing and a key fob operated parking barrier form the perimeter of the site. The eastern edge of the site is tarmac surfaced and car parking takes place on it parallel to the highway with space for up to four vehicles. Busher Walk is an unclassified single two-lane carriageway road that primarily provides access to council offices and emergency services buildings and facilities.

3.2 The site is bounded as follows: -

- to the north by the Kendal Mountain Rescue Team Base (with a mature sycamore tree straddling the boundary between the sites);
- to the east by Busher Walk (with Kendal Police Station present on the opposite side of the road);
- to the south by a grassed amenity area hosting a mature Beech tree. To the south of this Beech Tree is the south-western arm of Busher Walk and south of this road is the Grade II Listed County Hall Office building;
- to the south-west by a short steep embankment colonised by five trees (beyond which is an electricity substation);
- to the west by a two-storey industrial building (*Ref. [5/02/0416](#)*) that is currently being utilised by Age UK. The buildings' eastern elevation is finished with render and fenestration is limited to the second storey level (being set approximately 3.5m above ground level).

3.3 The site is just outside the boundary of Kendal's Conservation Area and town centre (with the latter being defined by South Lakeland District Council's Site Allocations Development Plan Document). The shipping containers and associated secure compound area are situated outside of Flood Risk Zones 2 and 3.

4.0 SITE PLANNING HISTORY

4.1 Prior approval for the demolition of a single storey building and associated detached boiler-house/garage, last utilised as an archives store, was granted in December 2018 (*Ref. [5/18/9003](#)*). The building was subsequently demolished in August 2019.

4.2 An application for planning permission to change the use of the application site, and a number of other parcels of land accessed via Busher Walk, to allow public car parking was granted subject to conditions by the Development Control & Regulation Committee in May 2019 (*Ref. [5/19/9001](#)*). Submissions were made in respect of the pre-commencement of development conditions 3, 4 and 5 in November 2019; with the pre-commencement elements of the conditions being

discharged on 25 November 2019, after which the planning permission was implemented. The County Council have undertaken a phased approach to this development. The areas to the west and east of County Hall have now been fully developed. There are no immediate plans to progress development of the two land parcels to the north of County Hall so as to facilitate their use as public car parks.

- 4.3 Planning permission was granted subject to conditions on 4 December 2019, to establish a temporary storage facility for fire service equipment at the site. The permission allowed for the siting of five steel shipping containers, erection of paladin fencing (so as to form a secure working area between these containers), wooden knee high boundary fencing and a key fob operated parking barrier to the perimeter of the site. Condition 2 of this permission requires this facility to be removed by 4 December 2022. It is noted that when this application was submitted, a five year temporary time period was initially sought by the applicant but following discussions, the applicant elected to seek a shorter three year time period. It is recognised that the number of containers on site has been increased from the original five approved to seven in total. This increase in numbers was allowed for by nationally prescribed permitted development rights. It is noted that the additional containers were required to assist in catering for a previously unexpected escalation in the requirements of the service for additional kit and equipment storage. It is noted that the Covid 19 pandemic was a contributing factor in this.

5.0 CONSULTATIONS AND REPRESENTATIONS

- 5.1 South Lakeland District Council Planning Department: No response received.
- 5.2 South Lakeland District Council Environmental Health Department: No observations.
- 5.3 Kendal Town Council: No material objection. Express disappointment that no adequate solution has been found by the original deadline.
- 5.4 Cumbria County Council (CCC) Local Highway Authority (LHA) & Lead Local Flood Authority (LLFA): No objection. Consider that the impact of the development is insignificant in terms of traffic and flood risk and that the level of impact will not change if the use is extended for one year. Notes the revised layout of the site, considers that the presence of the two additional containers does not affect parking or servicing. Considers that Conditions 4 and 7 fall outside of their remit.
- 5.5 Crime Prevention Design Advisor: No response received.
- 5.6 Cumbria Fire and Rescue Service: No response received.
- 5.7 The site falls in the County Council electoral division of Kendal Strickland & Fell. The Councillor representing this division, Mr Peter Thornton, comments as follows: *“Three years ago, I reluctantly agreed to this application on the basis that it was a temporary solution and that they would be relocated during the lifetime of the permission. I am therefore disappointed that this has not been done and that this application is coming forward to a DCR meeting just 3 days before the permission runs out. I am inclined to oppose this application but will support it on the understanding that work is currently underway to relocate these contains and on the strict understanding that I will oppose any further extensions of this*

permission beyond December 2023”

5.8 No representations have been received.

6.0 PLANNING LEGISLATION – LISTED BUILDINGS & CONSERVATION AREAS

6.1 Listed buildings are protected under planning law via the Planning (Listed Buildings and Conservation Areas) Act 1990 [PLB&CA]. Section 66 of the PLB&CA Act imposes a legal obligation on Local Planning Authorities (LPAs) to have “special regard” to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses when considering applications. Section 72 of the PLB&CA Act imposes a general duty on LPAs to pay special attention to the desirability of preserving or enhancing the character or appearance of conservations area.

7.0 PLANNING POLICY

7.1 [Section 38\(6\)](#) of the [Planning & Compulsory Purchase Act 2004](#) provides that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. Government policy is a material consideration that must be given appropriate weight in the decision making process.

7.2 The following documents constitute the local development plan for Kendal:

- [South Lakeland Core Strategy](#) - adopted 20 October 2010
- [South Lakeland Local Plan Land Allocation Development Plan Document Policies](#) - Adopted 17 December 2013.
- [South Lakeland Development Management Policies Development Plan Document](#) – adopted 28 March 2019

7.3 The following local development plan policies were considered relevant to the consideration of the original application for full planning permission.

- CS1.1 - Sustainable Development Principles
- CS1.2 - The Development Strategy
- CS2 - Kendal Strategy
- CS8.1 - Green Infrastructure
- CS8.2 - Protection and enhancement of Landscape and Settlement Character
- CS8.8 - Development and Flood Risk
- CS8.10 - Design
- CS10.2 - Transport Impact of new development
- DM1 - General Requirements for all development
- DM2 - Achieving Sustainable High Quality Design
- DM3 - Historic Environment
- DM4 - Green and Blue Infrastructure, Open Space, Trees, and Landscaping
- DM6 - Flood Risk Management and Sustainable Drainage Systems
- DM7 - Addressing Pollution, Contamination Impact, and Water Quality

7.4 It is considered that policies CS1.1, CS2, CS8.2, CS8.8, CS8.10, DM2, DM3, and DM6 remain relevant to the consideration of this application.

7.5 [The National Planning Policy Framework](#) (NPPF) was published in a revised and

updated form in July 2021. The national online [Planning Practice Guidance](#) (PPG) suite was launched in March 2014 and is continually updated. Both are material considerations in the determination of planning applications. The following sections and paragraphs of the NPPF are considered to be relevant to the determination of this application:

- Section 2 - Achieving sustainable development: Paragraphs 7, 8, 9, 10, 11 & 12;
- Section 4 – Decision-making: Paragraphs 38 & 47;
- Section 8 - Promoting healthy & safe communities: Paragraphs 92, 96 & 97;
- Section 11 - Making effective use of land: Paragraphs 119, 120, 121, 122 & 123;
- Section 12 - Achieving well-designed places: Paragraphs 126, 130, 134 & 135;
- Section 14 - Meeting the challenge of climate change, flooding, and coastal change: Paragraphs 152, 154, 161, & 167;
- Section 15 - Conserving and enhancing the natural environment: Paragraphs 174 & 179.
- Section 16 - Conserving and enhancing the historic environment: Paragraphs 189, 191, 194, 195, 197, 199, 200, 202, 206 and 207.

7.6 The following section (and paragraph) of the PPG is also of particular relevance to the determination of this application:

- [Use of Planning Conditions](#) – *Paragraph: 014 Reference ID: 21a-014-20140306* - When can conditions be used to grant planning permission for a use for a temporary period only?

8.0 PLANNING ASSESSMENT

8.1 The key planning issues relevant to the proposed schemes are considered to be:

- a) **Whether there is a continued and reasonably justified need for the retention of this temporary facility and if so, whether the time period sought reasonable.**
- b) **Whether its retention for a further year would unduly adversely affect the character and appearance of the area.**

Need: Is there a continued and reasonably justified need for the retention of this temporary facility and if so, is the time period sought reasonable?

8.2 The use of this parcel of land as a fire service equipment store was considered acceptable in principle in May 2019, given the relatively small scale of the facility and the immediate areas' emergency service association. However, the utilitarian shipping-container form and materials was recognised as being temporary in nature and to be unsuitable in the long-term on the edge of a Conservation Area for the historic environment.

8.3 It is disappointing that a permanent replacement equipment store facility has not come forward and been delivered since planning permission was granted in May 2019. It is acknowledged that the Covid-19 pandemic and Local Government Reform (LGR) programme has undoubtedly hindered progression of a replacement facility but it is noted that a feasibility study looking at alternative sites suitable for a permanent facility has been produced and is being considered

by Cumbria Fire and Rescue Service (CFRS). Furthermore, it is noted that CFRS have indicated that they are minded to provide an alternative temporary interim solution for the equipment store service next year should a permanent solution not come into fruition. A one year period would appear to be a reasonable and adequate amount of time to advance alternative provision for this equipment store service. It is noted that Paragraph 014 (Reference ID: 21a-014-20140306) of the PPG qualifies its statement that it “will rarely be justifiable to grant a second temporary permission” with the exception of cases “where changing circumstances provide a clear rationale” and where it is considered appropriate to enable the temporary use of land “prior to any longer-term proposals coming forward (a ‘meanwhile use’)”. It is considered the circumstances already raised above provide a reasonable rationale for the need for more time.

- 8.4 This current facility is undoubtedly an essential operational asset for CFRS. It is recognised that further time is needed to bring forward alternative arrangements/site for this fire service equipment store facility in a planned and programmed manner. Refusal of the short time extension sought would be highly disruptive to service delivery. Whilst it remains that its current form is not an acceptable form of permanent development in this location, the relatively short period sought for its retention is not considered to be unacceptable as a continued temporary expedient while alternative permanent solutions are reviewed and further progressed.

Design and Heritage Impact: Would the retention of the facility for a further year unduly adversely affect the character and appearance of the area?

- 8.5 The statutory duties set out in the PLB&CA to have special regard to the desirability of preserving the setting of a listed building (Section 66) and to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area (Section 77) are engaged by this proposal as are policies CS1.1, CS8.6 and DM3 concerning heritage matters. In terms of design, policies CS8.2, CS8.10, DM1, DM2 and DM4 also apply. It is noted that the July 2021 iteration of the NPPF, strengthened the NPPF's wording in respect of the importance of good and locally distinctive design.
- 8.6 The site boundary is approximately 32m from the northern elevation of the Grade II Listed County Hall and is at least 20m outside of the boundary of Kendal's Conservation Area. The provision of additional shipping containers under permitted development rights brings the above ground structures present on site closer to the site boundary and these heritage assets. However, these additional single storey units are sited close to the original units and close to the eastern “factory building” so are not prominent on the street scene or the setting of the heritage assets. Views of the containers from within the Conservation Area are limited to a small part of the short length of Busher Walk that falls within the Conservation Area; while views from County Hall are limited to those available from private office spaces present on the northern side of the building. In light of the set-back siting of the above ground structures and the intervening filtering effect of retained trees the facility avoids any significant harmful effects on the character and appearance of the Conservation Area or the setting of County Hall (or views from and toward them) and the street scene. Whilst the structures are not prominent features, the site does not contribute positively to the street-scene. By virtue of their materials, external finishes, and single-storey “flat-roofed” form, the structures that constitute this facility, do not relate to the architectural or historic interest of the town, and do not constitute good design. The structures, in

terms of both appearance and design, are not in-keeping with the character of the area. However, the residual harm of retaining this facility for an additional short-term period would be less than substantial. The operational benefits this facility would continue to confer to the fire service is considered to provide a wider public benefit. The public benefit is considered to outweigh the residual harm associated with the proposal's uncharacteristic materials and utilitarian form by virtue of the short additional time period for retention proposed.

In light of the above analysis and, critically, the short additional time period sought for retention, the public benefit associated with the proposal (in terms of an operationally efficient fire service) would outweigh the residual less than substantial level of harm the discordant materiality and form of this proposal would have on the character, significance and setting of, these heritage assets and the views from and towards them.

Other Material Considerations

- 8.7 **Residential Amenity:** No complaints have been received as regards the operational use of this facility. I consider that its retention for a short additional period would, subject to the condition restricting operational hours, not adversely affect residential amenity.

9.0 CONCLUSION

- 9.1 This temporary facility comprises, primarily, off-the-shelf shipping containers and is still considered to be an unacceptable form of permanent development in this location just outside the boundary of Kendal's Town Centre and Conservation Area. The applicant and Cumbria Fire and Rescue Service recognise the need for a suitably sited and larger permanently built space for the fire service store facility going forward and require additional time to review and put in place alternative solutions. The retention of the existing facility for a further period of up to a year would allow for a considered and orderly relocation. This time period is considered reasonable and achievable. The benefits the retention of this temporary facility would confer to a critical emergency response service are considered to weigh heavily in favour of this short time extension proposal. I am therefore satisfied that there is a continued practical need to retain this facility for an additional short period as a temporary expedient while alternative solutions for provision are reviewed and delivered.
- 9.2 Despite the sympathetic siting of the containers in relation to heritage assets; they result in some minor residual harm to the setting of (and views from) Kendal's Conservation Area and the Grade II listed County Hall. However, this residual harm is considered to be less than substantial and to be outweighed by the operational benefits this facility confers to the fire service and the wider public benefit; provided the retention is only for the short term proposed. In light of the short lifetime and reversibility of the development the residual temporary harm on heritage significance is considered to be outweighed by the identified wider public benefit. Similarly, whilst the development does conflict with elements of policies seeking locally appropriate and distinctive design, it is considered that this is also outweighed by the need and benefit of the retention of this important community infrastructure for a brief further stretch of time. In conclusion the application proposal is temporary expedient, and the public service benefit of the retention of this facility for a short additional time period is considered to outweigh the limited residual harm of its presence for a further period of up to a year. It is therefore recommended that this application be granted subject to

conditions.

Human Rights

- 9.3 The development present and the associated use of the land have a limited impact on the visual and residential amenities of the area. Any impacts on the rights of local property owners to a private and family life and peaceful enjoyment of their possessions (Article 8 and Article 1 of Protocol 1 of the Human Rights Act 1998) are minimal and proportionate to the wider social and economic interests of the community.

Angela Jones

Executive Director for Economy and Infrastructure

Contact: Mr Edward Page

Electoral Division Identification: Kendal Strickland and Fell ED – Mr Peter Thornton

Development Control and Regulation Committee – 1 December 2022

Appendix 1 - PROPOSED PLANNING CONDITIONS

Time Limit for Temporary Use/Development

1. The development hereby permitted shall be for a limited period only - expiring on 4 December 2023. At the end of this period the use hereby permitted shall cease and the shipping container units and paladin fencing hereby approved removed from the site.

Reason: To comply with Section 72 of the Town and Country Planning Act 1990. To ensure the removal of the shipping containers and associated paladin fencing following the temporary period of this permission in the interests of the visual amenity of the area, because the proposed structures would otherwise prove unacceptable in this location on a permanent basis.

Approved Scheme

2. The development hereby permitted shall be operated and maintained in accordance with the following:
 - a. Planning Supporting Statement – Rev.E – submitted 22 November 2019 in connection with 5/19/9011;
 - b. Plans numbered and named:
 - i) 5742-01-Rev.P1 - Site Plan;
 - ii) 5742-02-Rev.P1 - Elevations and Section - Welfare Cabin and Container Details;
 - iii) CM19002-A-06-Rev.P01 – Boundary Knee Rail Fence Detail;

Reason: To ensure the development is carried out to an approved appropriate standard and to avoid confusion as to what comprises the approved scheme.

Hours

3. No operational use of the facility shall take place between the hours of midnight and 07:00am.

However, this condition shall not operate so as to prevent the retrieval of additional equipment during or following an emergency incident.

Reason: To ensure a good standard of amenity can be maintained in line with Policy DM7 of the SLDC DM-DPD.

Lighting

4. All external lighting shall utilise LED type luminaires, with each lighting unit being directed downwards and into the secure compound area so as to minimise light spill outside of this area. The lighting must meet the Obtrusive Light Limitations for Exterior Lighting Installations for Environmental Zone - E2 contained within Table 1 of the Institute of Light Engineers Guidance Notes for the Reduction of Obtrusive Lighting, GN01, dated 2005.

External lighting shall not be illuminated between the hours of midnight and 07:00, save for security lighting activated by unauthorised entry by persons or

vehicles or lighting required in connection with the retrieval of equipment required for an emergency response.

Reason: To minimise the potential for any nuisance and/or disturbances to neighbours and over illumination of the surrounding area in line with Policy DM7 of the SLDC DM-DPD.

Appendix 2 - PLAN OF SITE LOCATION/EXTENT

