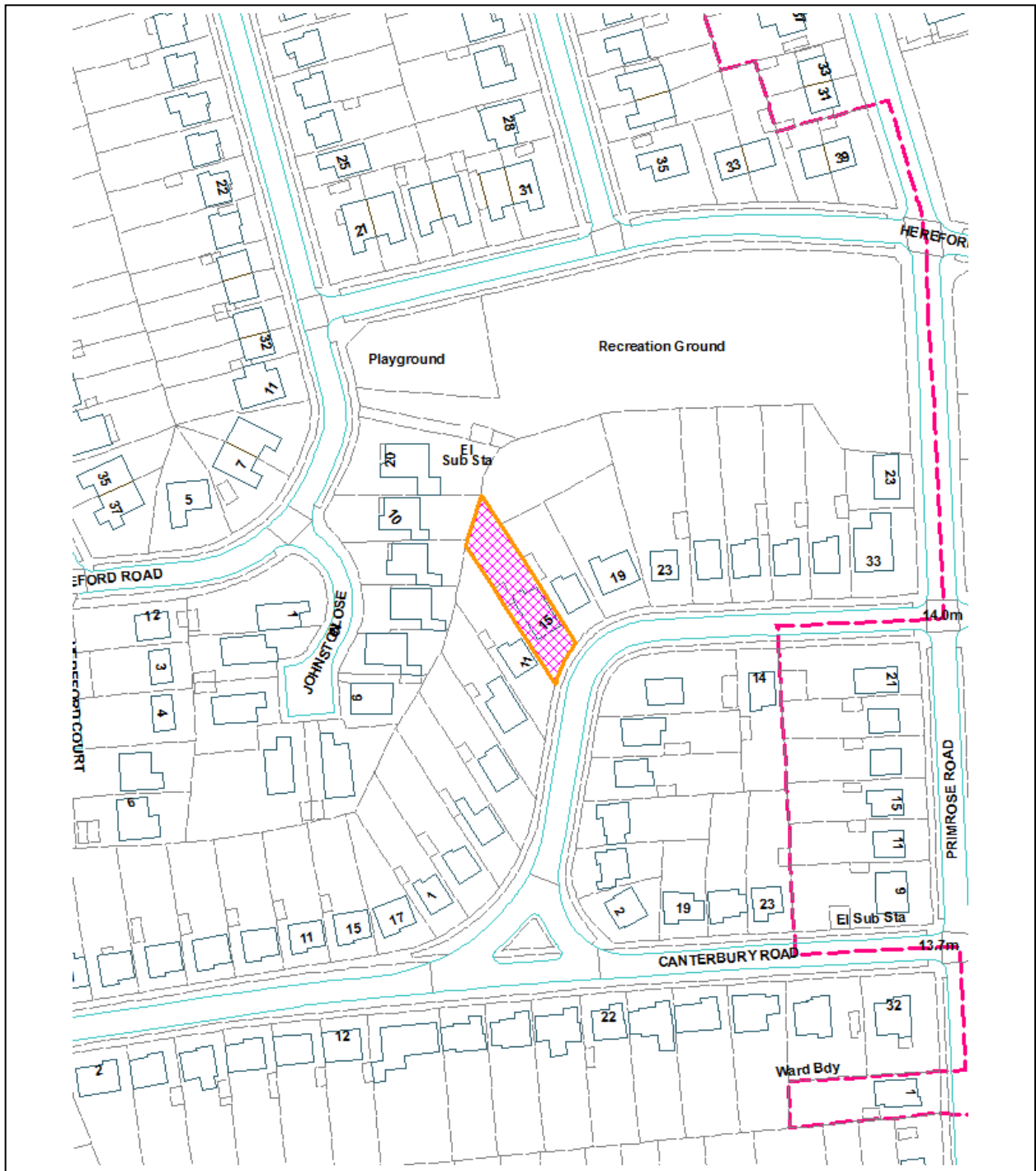


PLANNING COMMITTEE

25 August 2015

REPORT OF THE HEAD OF PLANNING

A.4 PLANNING APPLICATION - 15/00867/FUL - 15 THE CHASE HOLLAND ON SEA, CLACTON ON SEA, CO15 5PU



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Application:	15/00867/FUL	Town / Parish: Clacton Non Parished
Applicant:	The Chase Nursery	
Address:	15 The Chase Holland On Sea Clacton On Sea CO15 5PU	
Development:	Variation of condition 3 of planning permission 13/01206/FUL and variation of condition 2 of planning permission 14/00339/FUL to allow a maximum number of 35 children to attend the day nursery at any one time.	

1. **Executive Summary**

- 1.1 The application has been referred to Planning Committee by Officers as a refusal given the volume of public support for the proposal.
- 1.2 The application seeks to vary conditions on two existing planning permissions 13/01206/FUL (relating to the ground floor nursery) and 14/00339/FUL (which approved change of use of the first floor flat to ancillary nursery accommodation and after school club room). The current restriction is for a maximum of 35 children on any day across both floors. The applicants are seeking to vary this to allow a maximum of 35 children to attend the day nursery at any one time. This is within their current Ofsted limits but will enable them more flexibility across the different morning, afternoon and after school sessions for children that do not attend all day.
- 1.3 The property was originally a detached two storey house which was changed over 40 years ago to have a residential flat at first floor and children's nursery on the ground floor. Following the grant of 14/00339/FUL it is now 100% children's nursery which falls within use class D1 (Non-residential institutions). The site is surrounded by residential development and is a three minute walk from Holland Haven Primary School.
- 1.4 It is considered that the increase from 30 children on any day to 35 children on any day approved under 13/01206/FUL is the maximum level that this nursery can operate at without resulting in serious harm to residential amenity or highway safety in this residential street. To allow a change to 35 children at any one time would result in no control over the number of change overs of children between the restricted hours of 8.30am to 6pm Monday to Friday resulting in serious disturbance from comings and goings of parents and children throughout the day. This would also result in a significant intensification of the existing use, and the cumulative effect of these vehicle movements on this residential street, where there is no off street drop off and pick up or parking facilities for parents or carers, is likely to lead to severe congestion, obstruction and conditions of danger contrary to highway safety. The application is therefore recommended for refusal.

Recommendation: Refuse

1. The proposal for variation of conditions to allow a maximum of 35 children to attend the day nursery at any one time is considered contrary to the National Planning Policy Framework (2012), saved Policies QL10, QL11, and TR1a of the Tendring District Local Plan (2007) and Policies SD8 and SD9 of the Tendring District Local Plan: Proposed Submission Draft 2012 as amended by the Tendring District Local Plan: Pre-Submission Focussed Changes (2014).

The Framework states planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. Saved Policy QL11 and Draft Policy SD9 state all new development should be compatible with surrounding land uses and

minimise any adverse environmental impacts; development will only be permitted if it will not have a materially damaging impact on the privacy or other amenities of occupiers of nearby properties, including nuisance created by additional road traffic.

The current use of the nursery is restricted to a maximum number of 35 children on any day. The limit was set per day in light of the provision of sessional care where otherwise 35 children could attend in the morning, they could all leave, a new group of 35 children could arrive in the afternoon, then they leave and a new group of 35 children attend the after school club with a huge resultant impact upon neighbours from all the comings and goings associated with pedestrian and vehicle traffic and congestion within this residential street due to the limited parking available. As there are no powers outside of planning controls to limit noise disturbance for this use the limit on numbers per day is considered essential to preserve the amenity of neighbours, four of which share an immediate boundary with the site.

2. Furthermore, the Framework states decisions should take account of whether safe and suitable access to the site can be achieved for all people. Saved policy TR1a states that development affecting highways should seek to reduce and prevent hazards and inconvenience to traffic. Saved Policy QL10 states planning permission will only be granted if the highway network will be able to safely accommodate the additional traffic the proposal will generate. Draft Policy SD9 states new development must meet practical requirements and access to the site must be practicable, and Draft Policy SD8 states development proposals will only be acceptable if the additional vehicle movements likely to result from the development can be accommodated within the capacity of the highway network.

It is considered that allowing up to 35 children at any one time to occupy the nursery would result in a significant intensification of the existing use, and the cumulative effect of these vehicle movements on this residential street, where there is no off street drop off and pick up or parking facilities for parents or carers, is likely to lead to severe congestion, obstruction and conditions of danger contrary to highway safety and the above planning policies.

2. **Planning Policy**

National Planning Policy Framework (2012)

The Framework states the Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system.

The Framework states planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. Decisions should take account of whether safe and suitable access to the site can be achieved for all people.

Local Plan Policy:

Tending District Local Plan (2007)

QL1 Spatial Strategy

QL10 Designing New Development to Meet Functional Needs

QL11 Environmental Impacts and Compatibility of Uses

TR1a Development Affecting Highways

TR7 Vehicle Parking at New Development

Tendring District Local Plan Proposed Submission Draft (2012)

SD1 Presumption in Favour of Sustainable Development

SD2 Urban Settlements

SD5 Managing Growth

SD8 Transport and Accessibility

SD9 Design of New Development

Other guidance:

Essex County Council Parking Standards (2009)

3. Relevant Planning History

15/00868/FUL Retention of two outdoor shelters. Pending: Also on agenda for consideration

14/00339/FUL Change of use of upstairs from residential to ancillary nursery accommodation and After School Club room. Approved 29.05.2014

13/01206/FUL Increase the number of children for full day care from 30 to 35. Extend opening hours from 9am - 3.30pm to 8.30am - 6.00 pm. Extend from 44 weeks of opening to 45 weeks. Approved 15.01.2014

12/00902/LUEX Use of ground floor as a children's nursery for full day care for up to 30 children per day within the hours 9:00am to 15:30pm Monday to Friday for 44 weeks of the year. Granted

TEN/872/85 Continued use of established Nursery School for 20 children (renewal of permission TEN/1509/83). Approved

TEN/1509/83 Increase permitted number of children from 15 to 20 in respect of established Nursery School. Approved

TEN/3/75 Use of ground floor of house and rear garden for purpose of Nursery School. Approved

CLA/459/73 Use of ground floor and garden as Nursery School for 20-25 children (already operating as a nursery). Refused

4. Consultations

Essex County Council Highways

The Highway Authority understands that nurseries and crèche's operate on a sessional basis, sometimes as many as 5 separate sessions per day. This proposal to allow 35 children to be in attendance at any one time could lead to 35 children coming and going for each session. The cumulative effect of these vehicle movements on this residential street where there is no off street drop off and pick up or parking facilities for parents or carers is likely to lead to severe congestion, obstruction and conditions of danger Policy contrary to highway safety.

Environmental Health

In terms of complaints we are not able to respond as any noise will not constitute a statutory nuisance. The use of the site as a nursery has, as I understand, been taking place for up to 40 years and the recent lawful use application then regularised this situation. At that time no comments were made other than that no noise issues had previously been associated with the premises. The amendment from 30 to 35 children was granted under planning permission and one of the reasons to limit to thirty five was due to the potential to cause noise as was the setting of operating times.

The current application seeks to achieve only thirty five children at any time rather than thirty five children as a whole for the day. I also understand that some of the structures now placed in the garden are seeking to obtain planning permission.

There is no power to take action under statutory nuisance. Planning control can become involved where it is detrimental to the amenity. This has been included in a previous permission where the number of children was restricted to thirty five and the hours of operation limited. In terms of any comments that environmental health can make which will become planning conditions there is no power for this service to act as the noise will not constitute a statutory nuisance and as such planning could not then make it a condition as it would be unenforceable. There is the potential for aggrieved individuals to take action under section 82 of the Environmental Protection Act 1990 to determine a nuisance or a public nuisance which is also on the lower evidential threshold of the balance of probabilities.

Regeneration

Broadly supportive of this application, but would have liked to see information on any additional employment that this expansion facilitates as part of the application.

5. Representations

- 5.1 Councillor J. Broderick has requested that this application be determined at Planning Committee for the following reasons: Negative impact on neighbours and highway safety.
- 5.2 26 neighbour letters of objection have been received on the following summarised grounds:
- Strongly oppose further expansion and removal of controls on numbers of children
 - Decades of happy co-existence with previous owner but now experience noise, nuisance and parking problems which need more control
 - Have already had 12% increase in children and 32% increase in opening hours
 - Structures and paving to the side and rear garden erected without planning permission (considered separately under 15/00828/FUL)
 - Could result in 1000 movements a week as children are delivered and collected from nursery
 - Totally inappropriate within quiet neighbourhood resulting in intrusion of residents' rights for peaceful enjoyment of their homes and amenity
 - Car has been bumped twice in last three weeks, parents block driveways, children litter

- Should be moved to a commercial area (not a material planning consideration each case must be considered on its merits)
- Unbearable noise from drop off and within rear garden particularly of wheeled toys
- Many support letters are from non-residents and parents
- Could block emergency vehicle access

5.3 In addition to the above a 'Chase Community Response' objection has been submitted and is summarised as follows:

- Noisy, private business operating in residential area impinges on neighbour's human rights
- Noise from parking, reception area, and garden across 40 metres
- Few objections to 13/01206/FUL likely to be a result of the nursery writing to residents to confirm no additional children or staff
- After school club is of noisier, older children
- Inconsiderate parking, damage to grass verges, sometimes abusive altercations with parents
- More children and longer time periods of use of rear garden mean residents are denied full use of their gardens even two adjoining gardens away
- Environmental Health has refused to record the noise (detailed within their comments under Consultations above)
- To allow this proposal would allow a potential increase of 300% on allowed numbers
- Ask Committee to impose tighter controls on noise, nuisance, outdoor play and parking
- Opportunity to close and return to a dwelling or return to 30 children per day (this is not possible as the site has a lawful D1 nursery use for up to 35 children per day provided it operates within the specified conditions).
- Generates 47,000 footflows and associated nuisance a year
- Disagree existing conditions are not enforceable or necessary
- The unauthorised side porch is used as a reception area into the main side door where significant noise is generated alongside neighbour's conservatory and sitting out area (considered separately under 15/00828/FUL)
- Unauthorised structures act as megaphones amplifying noise (considered separately under 15/00828/FUL)
- Should enforce against unauthorised structures and prevent further expansion (considered separately under 15/00828/FUL)
- Increased nuisance and disruption following the two previous planning permissions.
- Tendring needs a Day Nursery Policy to control these businesses (the principle issues involved with this use – noise, highway safety, and residential impact are all adequately controlled by other Local Plan policies).

5.4 23 letters of support have been received on the following summarised grounds:

- Outstanding nursery with excellent reputation and fantastic links to local schools
- Huge part of local community for 40 years
- Sessional care provided allows parents to work
- Area is not unduly congested
- Significant shortage of high quality child care locally which is vital
- Heavily involved with Tendring School Readiness Project
- Numbers of children has remained consistent for many years this just seeks to regularise that
- New opening times have reduced congestion
- Most children live locally and walk or cycle
- Reducing hours would cut staff
- Excellent level of care and education provided

5.5 1 letter of comment has been received stating only the hours their child attends.

- 5.6 In support of their application the applicant makes the following summarised comments:
- 2014 Ofsted report provided. Rated Outstanding in all areas. Operates from four playrooms, employs 13 members of staff. Currently 96 children on roll within early years age group.
 - Question the enforceability of the existing conditions: Why was a limit of 35 set? This unnecessarily duplicates the Ofsted controls on numbers. Why were same conditions imposed on use of first floor as that on the ground floor? Limit set per day fails to take into account the arrangement where many children only attend for half day even though the overall impact would be the same. Many children are collected on foot. Incapable of enforcing the limit of 35 children per day as you cannot photograph the children every morning and afternoon to confirm whether a breach has occurred. It is therefore requested both conditions are removed in their entirety or to consider rewording to allow 35 children at any one time.
 - Nursery has been running for over 45 years.
 - Have recently featured on television and in a nursery magazine across 4 pages displaying our quality care.
 - In 2016 Government is doubling the 15 free hours a week to 30 putting the existing shortage of places in crisis.
 - The nursery has been operating on a maximum number of children at any one time basis for the last 20 years and I have hand written registers dating back 12 years that prove this.
 - Some congestion stated is from the nearby Primary School.
 - Eight of our children have been advanced a whole academic year due to advanced literacy skills.

5.7 In response to the applicant's comments: 35 was the number requested by them and it was considered necessary to make this the maximum number with the specified reason "To minimise noise nuisance and disturbance to adjoining and nearby properties in this residential area from comings and goings, and activities within the property and rear garden". Ofsted controls are completely separate to the planning system and are concerned with the welfare of the children, the planning control is in the public interest and specifically for neighbours surrounding the site. The same conditions were imposed on the first floor use as the ground floor use to prevent effectively a second nursery operating from the site with resultant increased noise disturbance, but to allow the applicant greater flexibility in their childcare provision. The limit was set per day precisely in light of the usual arrangement of sessional care where otherwise 35 children could attend in the morning, they could all leave, a new 35 children could arrive in the afternoon, then they leave and a new 35 children attend the after school club with a huge resultant impact upon neighbours from all the comings and goings and impact on the limited parking available. It is accepted that many children are probably collected on foot but given their young age they are unlikely to walk a significant distance so many would be collected by car. It is disagreed that 35 children per day is unenforceable – this could easily be monitored by counting the number of children going into the building from the street or by going into the premises and doing a headcount at the different sessions with written descriptions if necessary to prevent the need for photographs. To remove the conditions in their entirety would be wholly unacceptable and would result in no planning control over the numbers of children attending the nursery, the Ofsted limits are not within the Council's control and do not consider residential amenity or highway safety. As stated elsewhere within the report the certificate and approvals for this use are 'at any one time' based on the evidence and application form provided by the previous owner.

6. Assessment

The main planning considerations are:

- Planning Policy
- Highway safety

- Residential amenity

Proposal and history

- 6.1 The nursery use of the ground floor began in the early 1970s. Application 12/00902/LUEX granted a Certificate of Lawfulness of an Existing Use for full day care for up to 30 children per day from 9am - 3.30pm Monday to Friday for 44 weeks of the year. The previous owner's application form confirms that this was for 30 children per day and she demonstrated that that level of use had become lawful through the passage of time.
- 6.2 13/01206/FUL then approved an increase to 35 children per day between 8.30am and 6pm Monday to Friday for 45 weeks of the year. The intensification of the use proposed had to be viewed in relation to the lawful situation. It was accepted that a nursery of 35 children and nine full time equivalent staff would rarely be acceptable within a residential area for reasons of loss of amenity to neighbouring residents through noise and disturbance from the associated activities and comings and goings. However, as the nursery was an established use operating for around 40 years, and with 30 children for at least eleven years the application was approved subject to conditions restricting the number, hours and opening periods to that applied for.
- 6.3 14/00339/FUL then approved change of use of the first floor flat (occupied by previous owner) to ancillary nursery accommodation and After School Club room. This was subject to the same restrictions as 13/01206/FUL in terms of the maximum number of children attending the nursery per day, hours and opening periods to ensure that this additional accommodation did not allow them to increase the total number of children using the nursery per day or to increase the days or times of use so the impact on neighbours should have been very minor but enabled the nursery greater flexibility in their childcare provision.
- 6.4 The current application seeks to vary conditions on the existing planning permissions 13/01206/FUL and 14/00339/FUL to allow a maximum of 35 children to attend the day nursery at any one time, rather than the current restriction of 35 children per day. This is within their current Ofsted limits but will enable them more flexibility across the different morning, afternoon and after school sessions for children that don't stay all day.
- 6.5 No external alterations are proposed (separate application to retain the two garden structures). The front of the site is hardsurfaced and can accommodate three cars. There is a large rear garden with play equipment for the children.

Site location

- 6.6 The property is a detached two storey former dwellinghouse within the defined settlement limits, surrounded by residential development to all boundaries. The site is a three minute walk from Holland Haven Primary School and 1.2 miles from Holland Park Primary School.

Planning Policy

- 6.7 Saved policy QL1 states most new development will be concentrated within the larger urban areas (including Holland-on-Sea within Clacton) where accessibility to services, facilities and public transport is maximised. Draft policy SD2 identifies this as an urban settlement, which will be the focus for the majority of the district's economic growth.
- 6.8 The site lies in a sustainable location within close proximity of many dwellings and two primary schools. The ground floor has been a nursery for over 40 years with the first floor converted to additional nursery accommodation in 2014. The proposal therefore represents an expansion of an existing use within a sustainable location and is acceptable in principle subject to the detailed considerations below.

Highway safety

- 6.9 The frontage of the site is hardsurfaced and can accommodate three cars. The adopted parking standards require a maximum of 1 car parking space per full time equivalent staff and drop off/pick up facilities. It has previously been stated that there are nine full time equivalent staff so a maximum of nine car parking spaces should be provided. There are no drop off/pick up facilities and parents park on the street or collect children on foot.
- 6.10 This section of The Chase has around 22 dwellings on it and is too narrow to allow cars to park on both sides. The nursery is also located on the bend. The space for parking between the vehicular accesses to the dwellings is typically only wide enough to park one car so at peak times becomes quickly congested. There is no opportunity to provide additional parking on the site and clearly at peak times of drop off or collection and when fully staffed there is inadequate parking space likely to cause congestion and inconvenience to users of the highway.
- 6.11 The Highway Authority state they understand that nurseries operate on a sessional basis, sometimes as many as 5 separate sessions per day. (This comment is in reference to the applicant's website which states the session times of this nursery to be 8.30am-12pm, 9am-1pm, 9am-3.30pm, 12pm-3.30pm and 1pm-5pm). This proposal to allow 35 children to be in attendance at any one time could lead to 35 children coming and going for each session. The cumulative effect of these vehicle movements on this residential street where there is no off street drop off and pick up or parking facilities for parents or carers is likely to lead to severe congestion, obstruction and conditions of danger contrary to highway safety.
- 6.12 The Framework states decisions should take account of whether safe and suitable access to the site can be achieved for all people. Saved policy TR1a states that development affecting highways should seek to reduce and prevent hazards and inconvenience to traffic. Saved Policy QL10 states planning permission will only be granted if the highway network will be able to safely accommodate the additional traffic the proposal will generate. Draft Policy SD9 states new development must meet practical requirements and access to the site must be practicable and Draft Policy SD8 states development proposals will only be acceptable if the additional vehicle movements likely to result from the development can be accommodated within the capacity of the highway network.
- 6.13 It is therefore considered that allowing up to 35 children at any one time to occupy the nursery would result in a significant intensification of the existing use, and the cumulative effect of these vehicle movements on this residential street, where there is no off street drop off and pick up or parking facilities for parents or carers, is likely to lead to severe congestion, obstruction and conditions of danger contrary to highway safety and the above planning policies.

Residential amenity

- 6.14 The primary impact upon residential amenity relates to noise, from both activities within the building and rear garden, and from the comings and goings of staff, parents, and children on foot and by car. This is predominantly a residential area with low background noise levels.
- 6.15 The Environmental Health team have commented on the application to confirm that, like noise from children within schools, noise from children's nurseries does not constitute a statutory nuisance under Environmental Health legislation and they are therefore unable to take any action if complaints are received. They confirm that at the time the increase from 30 to 35 children was approved under 13/01206/FUL no noise complaints had been made. Furthermore one of the reasons to limit permission to thirty five children on any day was due to the potential to cause noise as was the setting of operating times. They confirm that in terms of any comments that Environmental Health can make which will become planning conditions there is no power for them to act as the noise will not constitute a statutory

nuisance and as such planning could not then make it a condition as it would be unenforceable.

- 6.16 As the nursery use commenced over 40 years ago and the use for 30 children was proved lawful by grant of a lawful development certificate it would be unreasonable to impose new restrictions in terms of times of outdoor play or session times or sizes that the use has not been restricted to in the past. The restriction to 35 children per day is considered to be the most appropriate way to control the intensification of the use. 35 children could all be dropped off at 8.30am and all collected at 6pm but in reality there would likely be three separate groups of e.g. 13 in the morning, 13 in the afternoon and 9 after school thereby staggering congestion outside the nursery and reducing noise levels from within the nursery and garden.
- 6.17 As there are no powers outside of planning controls to limit noise disturbance for this use the limit on numbers per day is considered essential to preserve the amenity of neighbours, four of which share an immediate boundary with the site. It is therefore recommended that the proposed variation of the conditions is refused.

Conclusion

- 6.18 In granting the two previous planning permissions (13/01206/FUL and 14/00339/FUL) it was accepted that a nursery of 35 children and nine full time equivalent staff would rarely be acceptable within a residential area for reasons of loss of amenity to neighbouring residents through noise and disturbance from the associated activities and comings and goings, particularly given the limited parking available and the narrow residential street. However, in this case as the nursery was an established use operating for around 40 years, and with 30 children for at least eleven years the previous applications were recommended for approval subject to conditions restricting the number, hours and opening periods to that applied for. The current proposal is considered to tip the balance from supporting a successful local business which is providing excellent pre-school care for which the District has a significant deficit, to resulting in overriding harm to the amenities of neighbouring residents and highway safety such that the application is recommended for refusal.

Background Papers

None