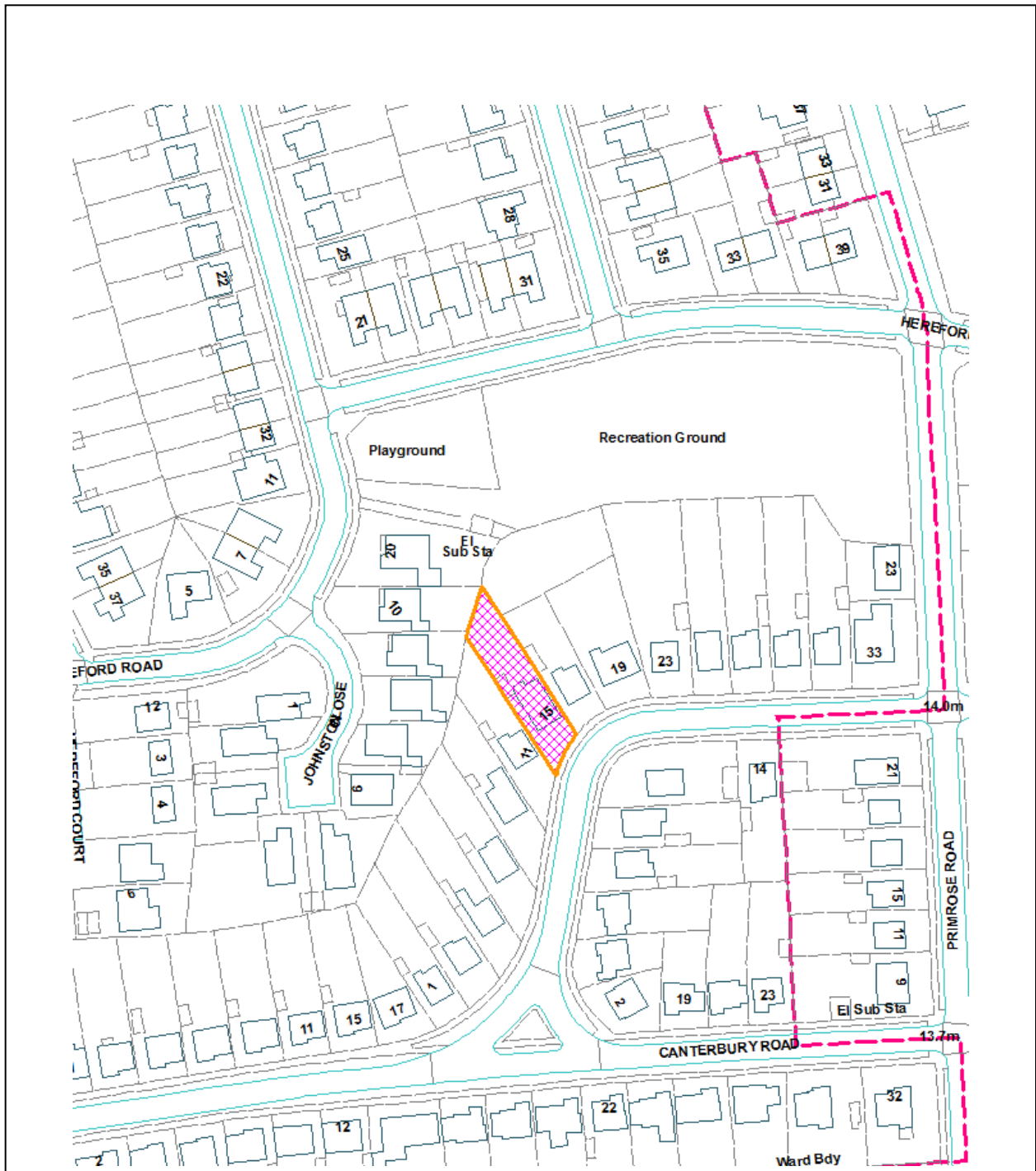


PLANNING COMMITTEE

25 August 2015

REPORT OF THE HEAD OF PLANNING

**A.5 PLANNING APPLICATION - 15/00868/FUL - 15 THE CHASE HOLLAND ON SEA, CLACTON ON SEA, CO15 5PU**



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<b>Application:</b>	15/00868/FUL	<b>Town / Parish:</b> Clacton Non Parished
<b>Applicant:</b>	The Chase Nursery	
<b>Address:</b>	15 The Chase Holland On Sea Clacton On Sea CO15 5PU	
<b>Development:</b>	Retention of two outdoor shelters.	

## 1. **Executive Summary**

- 1.1 The application has been referred to Planning Committee by Councillor J. Broderick due to concerns relating to negative impact on neighbours.
- 1.2 The application seeks to retain two outdoor shelters located within the rear garden of this day nursery.
- 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 The existing planning permissions restrict the number of children to a maximum of 35 on any day between the hours of 8.30am and 6pm. The proposal, to retain two outdoor shelters used by children to play underneath, is not considered to result in any significant harm to residential or visual amenity to justify refusing planning permission on these grounds and the application is therefore recommended for approval.

### **Recommendation: Approve**

1. List of approved plans.

## 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.

### **Local Plan Policy:**

*Tendring District Local Plan (2007)*

QL9 Design of New Development

QL11 Environmental Impacts and Compatibility of Uses

*Tendring District Local Plan Proposed Submission Draft (2012)*

SD9 Design of New Development

**3. Relevant Planning History**

15/00867/FUL 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. 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**

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.

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 – Have no specific comments to make.

## 5. Representations

- 5.1 Councillor J. Broderick has requested that this application be determined at Planning Committee for the following reason: Negative impact on neighbours.
- 5.2 20 neighbour letters of objection have been received on the following summarised grounds:
- Strongly oppose further expansion
  - Works carried out without planning permission
  - Hard surfacing should also be subject to planning control (the extended rear paving does require planning permission and was due to be included within this application along with the unauthorised side porch but amended plans have not been provided. The applicant has suggested an application will be submitted in early September to retain these two elements. Following determination of this application these two outstanding matters will be referred back to Planning Enforcement).
  - Decades of happy co-existence with previous owner but now experience noise and nuisance and breaching of conditions.
  - Seven nearby residents have complained to Tendring District Council about increased noise caused by the megaphone effect of the structures.
  - Near residents faced with large numbers of children playing outdoors for several hours a day resulting in loss of amenity of their homes and gardens.
  - Totally inappropriate within this quiet neighbourhood.
  - Call for imposition of more controls on outdoor noise and nuisance.
- 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
  - 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)
  - Ask Committee to impose tighter controls on noise, nuisance, outdoor play and parking (restrictions on the use as a nursery cannot be imposed under this application for retention of two structures).
  - 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 (to be considered under a separate application, this is also a replacement structure with plans from 1985 showing a car port in this location).
  - Unauthorised structures act as megaphones amplifying noise.
  - Should enforce against unauthorised structures and prevent further expansion.
  - Increased nuisance and disruption following the two previous planning permissions.

- Tending 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).
- Noise from outdoor play is similar to a farm tractor 100 decibels at 10 metres.
- The larger shelter has sandpit and is hard surfaced and sited alongside neighbour's sitting out area and greenhouse with regular noise against the boundary fence.
- There are actually four shelters and two brick extensions (two shelters are considered here, the third is the side porch to be considered under a separate application, the fourth is a small wooden shed (which is believed to be lawful through being completed over 4 years ago). The two brick extensions are shown as existing on plans submitted in 1985 so are also immune from planning enforcement).

5.4 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.
- Applicant was not aware permission was required for the shelters, a Council enquiry advised them they were permitted development (no formal pre-application enquiry was submitted and this is stated to have been a telephone call to the Planning department. This may have related to an assumption that this is a dwelling not a nursery so it does not benefit from permitted development rights).
- Provide cover for children from rain and sun and are appropriate in scale and design for this location.

## 6. **Assessment**

The main planning considerations are:

- Design
- 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. 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. 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.
- 6.2 The current application seeks to retain two flat roofed outdoor shelters within the rear garden. Shelter A measures 2.45m high by 7.2m long by 2.5m deep. It is sited just inside the boundary fence of the adjoining neighbouring dwelling at 11 The Chase and adjoins an existing shed which adjoins the existing single storey brick paint room (originally a garage before the change of use to a nursery). It is constructed of timber with clear sheeting to the flat roof and to the rear and side to fill the opening to the neighbour's boundary. Shelter B is located in the bottom corner of the garden on a low raised bed and measures 2.08m high by 3.3m long by 1.5m deep and is also constructed of timber with clear sheeting to the flat roof.
- 6.3 The alteration to the number of children permitted to attend the nursery is considered separately under 15/00867/FUL. This application should only consider the retention of the two outdoor shelters in relation to the lawful use of the site for up to 35 children on any day.

The concerns raised in relation to the unauthorised use of the nursery for more children than currently permitted is not relevant to consideration of this application and the breach of conditions can be enforced against pending the outcome of that application.

### **Site location**

- 6.4 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.

### **Design**

- 6.5 The Framework attaches great importance to the design of the built environment and confirms good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. It is important to plan positively for the achievement of high quality and inclusive design for all development, including individual buildings. Saved Policy QL9 and Draft Policy SD9 state all new development should make a positive contribution to the quality of the local environment, alterations must be well designed and maintain local character, and development must relate well to its site and surroundings particularly in relation to its siting, height, design and materials.
- 6.6 Both shelters are flat roofed of maximum 2.45 metres high thereby reducing their visual prominence and meaning that they are not visible from the public realm. They are constructed of timber with sheet roofing which is considered an acceptable appearance for this rear garden location. The two shelters to be retained therefore result in no material harm to visual amenity or the character of the surrounding area.

### **Residential amenity**

- 6.7 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, daylight or other amenities of occupiers of nearby properties.
- 6.8 As discussed previously the retention of these two structures must be considered in relation to the lawful use of the site for up to 35 children on any day. There are no restrictions on outdoor play times so the children are able to play in the garden in the open play area at any time. The provision of these two structures clearly provides a focus for their activities with play equipment set up under both shelters.
- 6.9 The application forms state the works were started on 01/01/2015 and completed 09/02/2015. Photographs from Officer site visits in December 2013 show a small shed in the location of the end of Shelter A and the area was fully hardsurfaced at that time. There was also a structure of very similar size and materials in the location of Structure B in December 2013. Aerial photographs from 2006 also show a smaller pitched roof canopy structure in the location of Shelter A where it joins the existing shed.
- 6.10 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 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.

- 6.11 Shelter A is the larger of the two with a covered area of 18 square metres and a height of 2.45 metres. It is sited next to the boundary with the neighbouring dwelling at 11 The Chase and has clear sheeting to close the gap between the roof and the boundary fence which will result in some minor sound insulation. Given its size it would allow a group of children to play underneath it in very close proximity to the neighbouring boundary and around 17 metres from the neighbouring dwelling at its closest point. The use as a nursery has been established for over 40 years and there are no controls over times of outdoor play. Given the existence of sheds and shelters along this boundary for a significant number of years and the unrestricted play within the rear garden, it is not considered that Shelter A results in such harm to residential amenity in terms of noise disturbance to justify refusing planning permission on these grounds. By virtue of its siting around 17 metres from the neighbouring dwelling and its low height there would be no material loss of light, outlook or privacy and Shelter A is therefore considered acceptable in terms of impact upon residential amenity.
- 6.12 Shelter B is sited in the far corner of the garden and benefits from existing planting to provide screening to the structure resulting in no material harm to the outlook, light or privacy of neighbouring dwellings. It is also located close to neighbouring sheds and is around 25 metres from neighbouring dwellings fronting The Chase, and around 13 metres from neighbouring dwellings fronting Johnston Close. Shelter B is therefore likely to result in less noise disturbance to neighbouring dwellings by virtue of its smaller scale (5 square metres) and siting and is therefore considered acceptable in terms of impact upon residential amenity.

Background Papers

None