

Report to: PLANNING COMMITTEE

Date of Meeting: 19 December 2019

Report from: Assistant Director of Housing and Built Environment

Application address: Fernwood Care Home, 30 Fern Road, St Leonards-on-sea, TN38 0UH

Proposal: Change of use from a C3 residential property to a D1 Non-residential institution, as a day nursery. The proposal includes: Increased widths to the external footpaths and erection of 2m acoustic fence (amended description).

Application No: HS/FA/19/00266

Recommendation: Grant Full Planning Permission

Ward: MAZE HILL 2018
Conservation Area: No
Listed Building: No

Applicant: Mr Jooshandeh per Mr Hill 7 Cambridge Road
HASTINGS TN34 1DJ

Public Consultation

Site notice:	Yes
Press advertisement:	No
People objecting:	29
Petitions of objection received:	1
People in support:	49
Petitions of support received:	0
Neutral comments received:	1

Application status: Not delegated - Petition received
More than 5 letters of objection contrary to the recommendation

1. Site and surrounding area

The site comprises a detached 5 bedroom chalet bungalow with good sized rear garden and detached double length garage. The site is located on a slight slope so that no.28 is slightly higher than the application site and no. 32, slightly lower. There is also a slight rise from the rear elevation of the bungalow on site to the rear boundary of the site. Boundary treatment comprises a combination of hedge, fencing and brick wall along the side (south) boundary to no. 32 and ranges in height between approximately 2 to 3m adjacent to the rear garden of the application site. The side (north) boundary treatment to no. 28 comprises principally a 3m (approximately) hedge adjacent to the rear garden of the application site. The rear boundary comprises a 1.2m high (approximately) wooden picket fence.

To the front, is a hardstanding area offering a single parking space accessed from an existing driveway. The front garden includes a semi mature tree, vegetation and a series of concrete paths.

To the north is no. 28 Fern Road, a detached 2 storey dwelling and to the south, no. 32 Fern Road a detached chalet bungalow. To the east is a pond, which is located within the grounds of the former Westerleigh School (allocated for residential within the Hastings Development Management Local Plan with an identified capacity of 68 dwellings (policy FB4)). The application site is located at a bend in the road and is opposite the junction to Fernside Avenue. Fern Road is a two way road but is fairly narrow with wide grass verges either side of the road some of which include semi mature trees which add to a sylvian character at this point. To the south on the other side of the road, approximately 50m from the site is a bus stop and a small open grassed area.

The surrounding area is principally residential in nature comprising detached two storey and chalet bungalows in an open plan estate, i.e. limited front boundary treatment. The character is a peaceful and quiet one. Most properties benefit from off road parking. There are no parking restrictions on the road at this point.

Constraints

SSSI Impact Risk Zone (thresholds not relevant)

The site is partially within a 1:100 and 1:1000 surface water drainage flood zone

Group TPO 237A covers land to the rear (east of the application site)

2. Proposed development

The application proposes a change of use from a dwelling (class C3) to a day nursery (class D1). The nursery is proposed to open Monday to Friday from 8am to 6pm, 48 weeks of the year. The nursery would employ 5 full time staff and cater for a maximum of 28 children, at any one time. The submission refers to three sessions operating in the morning and three sessions in the afternoon:

Morning

8.30am to 12 noon

9.00am to 12.30pm

9.30am to 1pm

Afternoon

12 noon to 3pm

12.30pm to 3.30pm

1pm to 4pm

In addition, additional care is offered from 8am or until 6pm as requested.

The 28 children will be in the age ranges of:-

- Up to four children between the ages of 2-3
- and twenty-four children between the ages of 3-5

And this will be the maximum number of children on site at any one time or any one session.

The applicant has advised that between 8 to 16 children will use the garden at any one time, activities outside include singing. Generally, the children would access the outdoor space from 9.30am until 11.30 am then 1.00pm until 4.00pm and that 2 members of staff will be outside at all times.

The application has been amended to remove the formation of a disabled parking space, land level changes and retention wall. The only external alterations now proposed are the widening of existing footpaths to the front garden to a total width of 1.2m and the erection of a 2m acoustic fence along both side boundaries within the rear garden.

For clarity, despite the content of the application submission, the applicant has advised that no additional tree or hedge planting is proposed. However amended plans have been submitted to show the location of a bike, buggy or scooter store. These are not required by the Planning Officer in assessing the scheme, but offered as a way of supporting walking to the site or for staff as an alternative to using the car as a means of transport. As the bin store is enclosed, and a bicycle and buggy store are proposed, elevations are required and have been requested. These have not been submitted but are required by condition 8 should Planning Committee determine to grant this application.

The application is supported by the following documents:

Site Waste Management Plan

Design and Access Statement

Environmental Noise Assessments

Travel and Access Plan

Transport Statement produced by Reeves Transport Planning

Relevant planning history

No relevant planning history on site

Land North of 14 Fern Road

HS/FA/08/00797 Amended by HS/FA/14/00713 & HS/FA/15/00819 for 14 semi-detached houses granted 01/2016

Land North of 31 Fern Road

HS/FA/17/00449 Erection of 10 dwellings (revised scheme following approval of planning application no. HS/FA/15/00763) granted 12/2017

Land Opposite 3 Fern Road

HS/FA/18/00866 Erection of pair of semi-detached dwellings granted 12/2018

National and local policies

Hastings Local Plan – Planning Strategy 2014

Policy FA1 - Strategic Policy for Western Area

Policy SC1 - Overall Strategy for Managing Change in a Sustainable Way

Policy T3 – Sustainable Transport

Hastings Local Plan – Development Management Plan 2015

Policy LP1 - Considering planning applications

Policy DM1 - Design Principles

Policy DM3 - General Amenity

Policy DM4 - General Access

Policy DM6 – Pollution and Hazards

Policy HC1 – Conversion of Existing Residential Dwellings

Policy HC3 – Community Facilities

Other policies/guidance

Hastings Local Plan Community Facilities Report December 2012

National Planning Policy Framework (NPPF)

Paragraph 11 sets out a general presumption in favour of sustainable development and states that development proposals which accord with the development plan should be approved without delay.

Paragraph 12 of the NPPF states that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Three dimensions of sustainability given in paragraph 8 are to be sought jointly: economic (by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation); social (providing housing, creating high quality environment with accessible local services); and environmental (contributing to, protecting and enhancing natural, built and historic environment) whilst paragraph 9 advises that plans and decisions need to take local circumstances into account, so they respond to the different opportunities for achieving sustainable development in different areas.

Section 12 of the NPPF sets out the requirement for good design in development. Paragraph 124 states: "The creation of high quality buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities."

Paragraph 20 states that community facilities include health, education and cultural infrastructure.

Paragraph 83 notes community facilities as including local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship.

Paragraph 92 states that in order to provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should:

- a) plan positively for the provision and use of shared spaces, community facilities (such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments;
- b) take into account and support the delivery of local strategies to improve health, social and cultural well-being for all sections of the community;
- c) guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs;
- d) ensure that established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community; and
- e) ensure an integrated approach to considering the location of housing, economic uses and community facilities and services.

Paragraph 127 of the NPPF requires that decisions should ensure developments:

Function well;

Add to the overall quality of the area for the lifetime of that development;

Are visually attractive in terms of:

Layout

Architecture

Landscaping

Are sympathetic to local character/history whilst not preventing change or innovation;

Maintain a strong sense of place having regard to:

Building types

Materials

Arrangement of streets

Optimise the potential of the site to accommodate an appropriate number and mix of development;

Create safe places with a high standard of amenity for future and existing users

Paragraph 130 states permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way that it functions.

Paragraph 130 also seeks to ensure that the quality of an approved development is not materially diminished between permission and completion through changes to the permitted scheme.

Paragraph 170 e) states that planning decisions should contribute to and enhance the natural and local environment by preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels noise pollution.

Paragraph 180 a) states that planning decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. In doing so they should:

- (a) mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life;

National Planning Practice Guidance

When is noise relevant to planning?

Noise needs to be considered when development may create additional noise. Good acoustic design needs to be considered early in the planning process to ensure that the most appropriate and cost-effective solutions are identified from the outset.

Can noise override other planning concerns?

It can, where justified, although it is important to look at noise in the context of the wider characteristics of a development proposal, its likely users and its surroundings, as these can have an important effect on whether noise is likely to pose a concern.

How can noise impacts be determined?

Decision making needs to take account of the acoustic environment and in doing so consider:

- whether or not a significant adverse effect is occurring or likely to occur;
- whether or not an adverse effect is occurring or likely to occur; and
- whether or not a good standard of amenity can be achieved.

This would include identifying whether the overall effect of the noise exposure would be, above or below the significant observed adverse effect level and the lowest observed adverse effect level for the given situation.

What are the observed effect levels?

- Significant observed adverse effect level (SOAEL): This is the level of noise exposure above which significant adverse effects on health and quality of life occur.
- Lowest observed adverse effect level (LOAEL): this is the level of noise exposure above which adverse effects on health and quality of life can be detected.
- No observed effect level (NOEL): this is the level of noise exposure below which no effect at all on health or quality of life can be detected.

Although the word 'level' is used here, this does not mean that the effects can only be defined in terms of a single value of noise exposure. In some circumstances adverse effects are defined in terms of a combination of more than one factor such as noise exposure, the number of occurrences of the noise in a given time period, the duration of the noise and the time of day the noise occurs.

How can it be established whether noise is likely to be a concern?

At the lowest extreme, when noise is not perceived to be present, there is by definition no effect. As the noise exposure increases, it will cross the 'no observed effect' level. However, the noise has no adverse effect so long as the exposure does not cause any change in behaviour, attitude or other physiological responses of those affected by it. The noise may slightly affect the acoustic character of an area but not to the extent there is a change in quality of life. If the noise exposure is at this level no specific measures are required to manage the acoustic environment.

As the exposure increases further, it crosses the 'lowest observed adverse effect' level boundary above which the noise starts to cause small changes in behaviour and attitude, for

example, having to turn up the volume on the television or needing to speak more loudly to be heard. The noise therefore starts to have an adverse effect and consideration needs to be given to mitigating and minimising those effects (taking account of the economic and social benefits being derived from the activity causing the noise).

Increasing noise exposure will at some point cause the 'significant observed adverse effect' level boundary to be crossed. Above this level the noise causes a material change in behaviour such as keeping windows closed for most of the time or avoiding certain activities during periods when the noise is present. If the exposure is predicted to be above this level the planning process should be used to avoid this effect occurring, for example through the choice of sites at the plan-making stage, or by use of appropriate mitigation such as by altering the design and layout. While such decisions must be made taking account of the economic and social benefit of the activity causing or affected by the noise, it is undesirable for such exposure to be caused.

At the highest extreme, noise exposure would cause extensive and sustained adverse changes in behaviour and / or health without an ability to mitigate the effect of the noise. The impacts on health and quality of life are such that regardless of the benefits of the activity causing the noise, this situation should be avoided.

National Design Guide 2019

Paragraph 112

'Successful communities require a range of local services and facilities including schools, nurseries, workplaces, healthcare, spiritual, recreational, civic and commercial uses. These:

- represent the needs and aspirations of the existing and future local community, including all ages and abilities;
- support everyday life and encourage sustainable lifestyles;
- are convenient and within walking or cycling distance on accessible routes to local homes and other facilities; and
- are located to complement rather than conflict with neighbouring uses in terms of noise, servicing and ventilation.'

'Providing for Journeys on Foot' (2000), The Institute of Highways and Transportation

3. Consultation comments

Highways – No Objection

The Highway Authority initially raised an objection to the application on the basis of inadequate and inconsistent information submitted. Clarification and further information was required (7th May). Errors within the travel plan were corrected and a disabled parking space was removed however no further information was submitted to address the concerns regarding the parking arrangement. ESCC therefore repeated their request for either amended plans or a parking survey to see if the surrounding area has sufficient capacity (21st May). A Transport Statement was submitted which referred to a recent appeal decision and suggesting on the basis of this that a further parking survey was not required. ESCC Highways noted the Transport Statement advising that applications are dealt with on a case by case basis. Their objection and requested for a parking survey was repeated (17 July). A parking survey was undertaken mid-September and submitted on 18th September. ESCC

Highways noted that the parking survey and accompanying technical note demonstrate that there was sufficient capacity within the vicinity of the site to accommodate the required vehicles. As such, this addressed ESCC Highway's previous concerns and their comment changed to 'No Objection'. ESCC Highways did suggest that white line markings to TSR&GD 1026.1 should be considered in front of the site to allay safety concerns with waiting vehicles opposite the junction with Fernside Avenue. (Informative note no. 3)

ESCC Early Years Children Services – **No Objection**

Supports the application noting the need for early education places in the area and that the wards of West St Leonards and Maze Hill do not have any nursery provision. The response states, *'The majority of families also have no access to transport which becomes a barrier to accessing quality childcare for some of our most disadvantaged children. Consequently it is difficult for parents or carers to access training or employment to improve their skills, aspirations and opportunities to improve their economic status and life chances.'*

In response to a query regarding the distance of the Robsack Wood Day Nursery, 1.2 miles from the application site, and whether this realistically offers day nursery provision for local residents, ESCC Early Years responded as follows,

'Historically when planning early years places LA's, with guidance from Ofsted looked at what distance families could be expected to walk with very young children to access nursery provision and a mile was always the very upper limited. In reality most families will not walk that far and some families, since the nursery on the West St Leonards site closed have not accessed alternative provision.

The nursery in question was originally based on the West St Leonard Academies site and Robsack Wood is 1.5 miles away. The majority of families that attended the nursery on the West St Leonards school site were living south, south-east of the nursery's original site so the distance could be further. Robsack Wood serves a very different community.

The new venue the nursery is requesting planning permission still sits 1.2 miles from Robsack Wood.'

Environmental Health - Noise – **No Objection**

The initial Noise Report produced did not relate to the site and did not therefore provide a realistic or reasonable analysis of the impact of the day nursery on the neighbouring properties. A second Noise Report was submitted following which Environmental Health (EH) objected on a number of grounds including a failure to provide an accurate and comprehensive assessment of the potential noise impacts. A further Noise Report was submitted in an attempt to address the concerns raised by EH. However comprehensive analysis highlighted that the report was potentially inaccurate and not comprehensive and as such its findings could not be relied on. Further discussion between Environmental Health Officers and the applicant then followed and an Update Document was submitted. Based on these discussions and the Update Document, Environmental Health have no objection to the application subject to conditions (9, 10, 11, 12 and 13).

Refuse Storage – Leisure and Amenities - **No Objection**

4. Representations

In respect of this application a site notice was displayed to the front of the site. 90 letters of

representation have been received. Of these:

49 letters of support have been received from 46 different properties/organisations including Councillor Mike Turner, Councillor Karl Beaney and Early Years Fund Manager at Child Services ESCC.

39 letters of objection have been received from 24 different properties including Stagecoach South East.

2 comments have been received from Amber Rudd.

A Petition objecting to the proposed development has been received with 48 signatures.

A summary of the comments is listed below:

Letters of Support

- Looking forward to a new nursery
- Good Staff
- Good for and integral part of the community
- Beneficial for children's confidence
- No other day nurseries in West St Leonards which impacts on working arrangements of parents, particularly where they do not have a car
- Much needed pre-school education in the area
- Suitable premises and good location for nursery
- Supports working parents and development and growth of children, preparing them for school
- Traffic will not increase drastically noting that many families would walk to the nursery, location opposite junction will prevent parking by nursery as this would be contrary to law which states you cannot park within 10m of a junction
- Closest nurseries in Robsack and Battle
- The area is lovely quiet and there is parking
- Noise disturbance would mainly be at break times (an hour a day) and only let a small number of children out to play at one time. Children would only for half a day and as such noise level would not be high.
- Loss of employment for 5 practitioners with experience if nursery closed
- Housing development approved at the disused site of Grove School will substantially increase demand for nursery facilities in the area
- Benefits will outweigh the issues that might arise in granting permission

Letters of Objection

- Site opposite a very busy T junction. Following the opening of the Bexhill/Hastings link road, traffic on the road has increased at peak times. As such setting down, picking up, parking and crossing over the road would raise the risk of accidents
- Despite there being no nursery, why has this site been chosen given how busy the roads are.
- Parking cars on the junction will cause issues of visibility and there have been previous accidents at this junction
- Thursday and Friday mornings there are bin collections as well as a regular bus service.
- The Travel Plan submitted with the application states that the nursery intends to have 8 sessions with up to 28 children per day. Assuming one child per parent, this would potentially result in 28 additional cars, twice a day. As there is not sufficient parking on site to accommodate this, parents will have to park on the road, by a busy junction. At the same time many children are walking to and from school. This would cause highway safety issue and also delays for other car users, exacerbated by other residential development in the road. No objection to nursery, but rather to lack of off road parking, increased traffic and location close to junction and bus stop
- Site in question situation on dangerous bend in road with not good visibility, made worse should cars be parked outside
- Should refusal be given, the nursery operator will continue to find an alternative site and in doing so should find one more suited to this use
- The West St Leonards Children's Centre, Bexhill Road is likely to close down and it would be an ideal location for a nursery
- Why has Bexhill Road been removed from the catchment area identified in the Travel Plan, where shown in previous applications?
- The letters of support do not represent a balanced view of local residents as they relate to previous users of the nursery no community engagement has been carried out with local residents
- Those involved with the new nursery are not the same business as those involved with the old nursery
- The application form shows 0 employees
- The Travel Plan is flawed in that it is based on the old nursery which was co-located with the primary school and having an operating time between 9am and 3pm
- The Parking Survey Technical Note is flawed and is of limited value
- The nursery will operate 48 weeks of the year between 8am and 6pm and will attract those dropping of children by car
- The Travel Plan does not take account of additional visitors including prospective parents
- The number of parking spaces available has been over estimated
- Loss of a 5 bedroom family home would be contrary to Local Plan policy, the Council being in dire need of larger family houses and set a harmful precedent
- Since the applicant purchased the property, vehicles have parked regularly opposite the junction or just on the corner of Fernside Avenue reducing visibility and creating a hazardous situation
- Facts on Child Casualties 2015 states that the majority of child road deaths or serious

injuries take place in periods before or after school

- The driveway only fits one parking space and parents will not be able to use the garage parking and there is no turning space on site meaning cars will have to reverse out of the site cause highway hazard
- The Travel Plan is prepared by the applicant and is flawed, unachievable and unenforceable. The Nursery cannot compel its clients not to use the nursery nor can they prevent cars parking in a way that would block other driveways on the road. The Nursery cannot guarantee that staff will live locally or remain so.
- Drop off and pick up will not be quick as young children are involved and total of 52 car journeys would occur during the day, not including staff and deliveries
- A minibus has been seen parked at the premises frequently which will only add to the problem, the application does not provide details of this
- Statement from nursery manager that they cannot predict its usage / patterns therefore concern as to how drop off and collection will be staggered
- How will trade waste be dealt with
- Ofsted's website shows 9 alternative child care and early year providers less than half a mile from the postcode of the old nursery
- It would be better to build a purpose build nursery as part of the Grove Road development through a s103 agreement
- None of the supporters live in the area immediately surrounding the nursery
- Take offence at Cllr Turners comments that traffic disruption is a trivial issue
- Noise disturbance of people and cars will harm amenity of local residents by reason of noise
- Bus collection not suitable given age of children who need to be taken in nursery itself from the bus
- Noise disturbance from children playing outside with no mitigation to address this such as acoustic fences, play plan rotas and number of children playing in the rear garden at any one time
- The application should be withdrawn so that all these issues can be addressed
- Letter produced by Reeves Transport Planning dated 17th June 2019 states that the highway authority have not objected, this is incorrect
- The Travel Modal split has not been based on correct information
- Reeves Transport Planning refer to an appeal allowed for the operation of a nursery however there are key differences between the application site and that appeal site
- Parking on road arising from nursery, proximity to junction and location at a bend would have safety implications for the operation of Stage Coach bus service
- Other sites are available in the local area which are more suitable for accommodating the proposed use
- The Parking Survey (Technical Note) prepared by Reeves Transport Planning (RTP) is flawed and has limited value based
- Concern that the nursery can operate with less staff than the previous nursery location even though they are open for more hours
- Concern regarding the ability of the nursery to properly safeguard the children based on previous Ofsted reports
- Concern that there will actually be higher staffing levels than the application suggests

- Concern that the catchment area for the nursery will be wider than the application suggested, based on reports from Ofsted. The implication of this being that more people will drive than currently anticipated
- Applicant should not have been allowed to amend the application to the extent that they have

Petition

The petition raises issues already noted in the objection section above.

Neutral Comments

2 letters of representation have been received from MP Amber Rudd, the first supports the concept of a nursery within walking distance of the people it serves and provides an important service to the residents. The second letter clarifies her position in that her comments are neutral.

5. Background

The day nursery for which planning permission is now sought was previously located in the grounds of West St Leonards Primary School. It is understood that the operating hours of the nursery were 9am to 3pm, term time only.

The applicant has previously applied for planning permission for a Day Nursery at No. 2 Cavendish Avenue (HS/FA/18/00135). This application was withdrawn in May 2018 because during the course of the assessment, a separate offer was received and accepted for the property in question. A further application was submitted in respect of no. 49 Harley Shute Road (HS/FA/18/00636). That application was withdrawn in September 2018 following an objection from the Health and Safety Executive.

6. Determining issues

The main issues to be considered in assessing this application are, the principal of the proposed development, the loss of the existing residential use, the impact of the proposed use in terms of need/accessibility, highway safety, the character of the area and neighbouring residential amenities.

a) Principle

The site is in a sustainable location and the application is therefore in accordance with Policy LP1 Hastings Local Plan - Development Management (2015) in this respect and acceptable in principle subject to other local plan policies.

b) Loss of existing residential use

The proposal would result in the loss of one dwelling and as such Policy HC1 – Conversion of Existing Dwellings of the Hastings Development Management Local Plan (2015) is relevant. This policy states,

'To support the provision of quality homes and dwelling mix, planning permission will be granted for the conversion of all or part of a dwelling to another use or into multiple dwellings, provided that;

- a.the building can no longer be retained in its entirety for single family housing occupancy;*
- b.it would not include significant extension(s) or significant changes to room layouts to achieve an adequate standard of accommodation;*
- c.it would not involve the self-containment of basement areas or other parts of any property having inadequate light or low ceilings or which would result in a poor outlook from main windows; and*
- d.it would make adequate provision for refuse storage.'*

The property is a 5 bedroom chalet bungalow and provides larger family accommodation in the borough. The need for larger family homes, to counterbalance the bias in stock towards smaller dwellings and flats is noted in paragraph 8.7 of the Hastings Planning Strategy Local Plan (2014). The property is in an attractive residential location, is a good sized property, well served by public transport, with off road parking and a bus stop nearby. As such there is no reason to justify its loss other than the importance of providing a new day nursery in a location which requires this important service. The weight attached to the need for the service is considered greater than the weight attached to the need to retain larger family housing stock. Therefore whilst the proposed development is not in accordance with Policy HC1, it is considered there are material reasons that justify this development when assessed against this policy.

c) Proposed use as day nursery

The day nursery is proposed to be phased with three sessions in the morning and three in the afternoon. So at 8.30am, 9am and 9.30am cars will be arriving at the property. From midday, 12.30pm and 1pm collections and drop offs will occur as these represent the end of one session and beginning of another. From 3pm, 3.30pm to 4pm cars will be arriving to collect children. It is also noted that the nursery provides additional care from 8am to 6pm, thereby extending the periods of car movement and its impact on neighbouring amenity.

Although the Hastings Local Plan Community Facilities Report December 2012 defines a community facility as

'any building available to local people for community purposes. This can include community centres, meeting rooms, youth centres and church halls. It does not include establishments solely providing education, healthcare or leisure services. ... Community facilities can also include shops, pubs, libraries and other services'

The subsequently published National Planning Policy Framework 2019 however makes clear at paragraph 20 that community facilities include education. A day nursery provides a level of pre-education, suitable for children of that age. It is therefore reasonable to have regard to Policy HC3 of the Hastings Development Management Local Plan (2015), which encourages the provision of community facilities subject to a number of provisions as follows:

That it is acceptable in terms of

- a) location,
- b) design,
- c) access and
- d) impact on the locality

That it is in general conformity with other policies of this Plan, in particular:

- DM1 and

- DM3

1a. Location

The Early Years Foundation Stage (EYFS) (March 2017) states that a requirement of day nurseries is that they provide outdoor play wherever possible or plan daily visits for the same purpose. It is clear therefore that residential dwellings are a good fit for child care of some form. This is because they often come with a garden, as opposed to an office or commercial premises and are located in amongst other residential properties, their potential customer, making their service easy to reach by customers. Their location in a residential area is not something therefore that should be resisted. The intensity to which the premises is proposed to be used however needs to be carefully considered, principally to ensure that no highway safety issues would arise and that both the character of the area and the neighbouring residential amenity are not harmfully affected.

The property is located on a bend in Fern Road and as such some concern has been raised that this restricts visibility. No similar concern has been raised by the Local Highway Authority. The bend in the road at this point is gentle and therefore reduced visibility is not considered to be substantial. The site is also located opposite the junction of Fern Road and Fernside Avenue. Letters of objection raise concern that the combination of the bend, the junction and the level of parked cars generated by the proposed use, would create a highway safety issue. Concern has also been raised by the bus provider, Stagecoach, that a day nursery and associated parking, will affect harmfully the operation of their service. Again on this point there has been no specific objection raised. ESCC Highways requested that either 10 parking spaces are provided on site or that a parking survey was undertaken to show sufficient parking on the road. A parking survey has been undertaken which has established there is sufficient parking available on the road. Following this survey, ESCC Highways Authority has removed their objection and as such despite some understandable points raised here by local residents, they are not sufficient to warrant a highways reason for refusal. Matters of highway safety are discussed later in this report at paragraph e).

1b. Design

The only external alterations proposed are to increase path widths to 1.2m, which will make the paths more accessible for customers and the erection of a 2m side boundary acoustic fence. The fence will be located in the rear garden of the site and is of a height that is not considered to be harmful to the neighbouring residential amenities in terms of outlook, loss of light or shadowing. The proposed changes are minimal and no harm is considered to arise in this respect.

1c. Access

The site is located close to a bus stop and is accessible by means of transport other than the private car. Sufficient street parking is able to support the use and as such access is considered acceptable on this point.

1d. Impact on Locality

Minimal external changes are proposed and as such there is no impact to the character of the area in this respect. The proposed change of use will however represent a change to the character of the area at certain times of day arising from the noise and disturbance of children playing in the garden and being dropped off and collected.

Specifically, the day nursery is proposed to be phased with three sessions in the morning and three in the afternoon. So at 8.30am, 9am and 9.30am cars will be arriving at the property. From just after 9.30am to midday there should be no traffic movement other than perhaps deliveries. From midday, 12.30pm and 1pm collections and drop offs will occur as these represent the end of one session and beginning of another. Then again there should be no associated traffic movement until 3pm. From 3pm, 3.30pm to 4pm cars will be arriving to collect children. It is also noted that the nursery provide additional care from 8am to 6pm thereby extending the periods of car movement and its impact on neighbouring amenity. Between 8 – 16 children are proposed to be in the rear garden at any one time, as well as 2 members of staff, from 9.30am to 11.30am and from 1pm to 4pm.

The applicant has stated that because of low car ownership in the area that many of their customers will walk to the nursery and this is considered a reasonable assumption. Therefore although there is potential for 28 cars to arrive at the start and end of each session, it is likely to be less than this. Children's Services also refer in their consultation response to low car ownership in the ward. As such even with the 6 sessions through the day, many of the parents will walk their children to and from the nursery rather than being driven. In addition, those parents with cars may still choose to walk. It is also reasonable that some parents will have to drop their children off by car on their way to work, for example.

Government guidance regarding noise, taken from the National Planning Practice Guidance (NPPG) can be found within the policy section earlier in this report. In summary, the Government categorise the impact of noise into three groups:

- NOEL – No observed effect level – meaning that development will not be harmful in terms of noise.
- LOAEL – Lowest observed adverse effect level - where there is an observed adverse effect and mitigation is suggested here.
- SOAEL – Significant observed adverse effect level – in this instance noise causes a material change in behaviour, attitude or other physiological response, e.g. avoiding certain activities during periods of intrusion. Quality of life is diminished due to change in acoustic character of the area. In such instances uses that cause this effect should be avoided.

The first Noise Assessment dated 7th July 2018 was not assessed because it related to the wrong site, titled 49 Harley Shute Road. An initial objection was raised by Environmental Health on this ground noting the site is a quiet residential area. An amended Noise Assessment dated 20th July 2019 was submitted. In their assessment, Environmental Health commented that, '*the calculated Rating Level significantly under-estimates the potential noise levels in the neighbouring gardens*' and concluded,

'The Environmental Noise Assessment submitted fails to provide an accurate and comprehensive assessment of the potential noise impacts of the proposed development. The report has relied solely on the methodology from BS 4142, which is not intended to assess noise from nursery children playing. Furthermore, the use of BS 4142 has not been justified in any detail with reference to planning policy, and additionally, other relevant guidance on noise has not been considered. Calculations used in the assessment presented have been carried out on an incorrect basis. ACCON [external consultants used by Environmental Health] would also expect some consideration of noise from vehicle movements associated with the nursery to have been included in the report, even if this was only on a qualitative basis.'

In response to this a revised Noise Assessment was produced which commented on traffic noise and at paragraph 2.7 notes that traffic caused by the development is unlikely to be significant and as such the noise from such also likely not to be significant. In the methodology section of the report (paragraph 6.1 and 6.2) it is acknowledged that the British standard used for rating and assessing noise (BS 4142) is not ideal and does not specifically relate to the proposed use.

The report states that, *'If we omit any of the adjustments applied to the BS 4142 analysis the arithmetic mean specific noise level at the assessment position is 54.5 dB LAeq. This is 4.5 dB-A above the recommended guideline level for noise to amenity space but 0.5 dB-A below the upper guideline value.'*

BS4142 states:

"A difference of around 10dB or higher indicates that complaints are likely.

A difference of around 5dB is of marginal significance.

A difference of - 10dB is a positive indication that complaints are unlikely."

Appendix C of the Noise Report equates the three NPPG noise levels - Significant observed adverse effect level, Lowest observed adverse effect level and No observed effect level the BS4142 guidance as follows:

- Complaints are likely (10db difference or higher) = Significant Observed Adverse Effect Level (SOAEL).
- b. Marginal significance (5dB difference) = Lowest Observed Adverse Effect Level (LOAEL)
- c. Complaints are unlikely (-10dB is a positive indication) = No Observed Effect Level (NOEL)

The NPPG advises that anything above the level of LOAEL would be harmful. The Noise Assessment concludes that the impact of the proposed development can be considered equal to the LOAEL.

A further assessment of the Noise Report was undertaken by Environmental Health, having previously identified with the Planning Officer, some possible errors. The assessment of that report concludes that the Noise Report 'fails to provide an accurate and comprehensive assessment of the potential noise impacts of the proposed development and therefore the conclusions of the report cannot be relied upon.' Environmental Health note that despite the use of two BS standards, neither are specifically designed for day nurseries. For example BS8233 is designed to provide guidance on sound insulation and noise reduction for buildings rather than assessing noise from an external source. Although BS 4142 intended use is to assess industrial and mechanical noise, it is clear the submitted Noise Report significantly underestimates the possible noise levels in the neighbouring gardens because of the inclusion of inappropriate corrections factors. The distance correction applied to reflect a loss of sound between source and receptor is overestimated. In addition, a penalty for the tonality of outdoor play should be added, thus increasing the potential noise over the existing background levels. Without the distance correction and a tonal penalty there would be a significant adverse impact on neighbouring properties.

The Noise Report compared the predicted noise levels against the BS8233 guidelines. Without any of the aforementioned correction factors, the predicted noise level (54.5dB) is,

although within guidelines, at the upper limit (50-55 dB). Environmental Health consultation response raised concern that the Noise Report was potentially inaccurate and not comprehensive. As such there was further discussion between the Environmental Health team and the Environmental Health Consultant working for the applicant. This discussion agreed a methodology and an Update Document was subsequently submitted by the applicant, which set out the specifications for the acoustic fence. Amended plans have also been received to show the location of the acoustic fence in the rear garden, along both side boundaries. On this basis Environmental Health have withdrawn their objection and recommend approval subject to a number of conditions (9, 10, 11, 12 and 13). Based on this revised response and the predicted noise levels, with an acoustic barrier, it is considered that the noise level would not be above the LOAEL and therefore, in accordance with the NPPG would not cause adverse effects on health and quality of life. As such the application is considered to be in keeping with Policy DM6 of the Hastings Borough Development Management Local Plan (2015).

Points 2a and b of Policy HC3 relate to a requirement for compliance with relevant local plan policies, particularly identifying Policies DM1 and DM3 which deal with design principals and general amenity. For reasons set out above the proposed development is considered to be in keeping with both these policies.

In considering the impact on locality, letters of representation have been submitted which identify the following premises currently or recently available in the local area which, it is suggested, are more suitable for such a use. These sites are listed below:

- a. 49 Essenden Road (former doctors surgery)
 - 2 x Unspecified property on Harley Shute Road
 - 2 x Unspecified property on Bexhill Road

In respect of properties on Harley Shute Road and Bexhill Road it is agreed that the background noise level is likely to be higher than the application site and consequently the change in noise levels arising from the proposed use and the impact on neighbouring residential amenities likely to be less severe than the application site. It would also appear from the details submitted that the sites have more on-site parking available than the application site. The purpose of this application, however, is not to assess the suitability of the proposed use at other sites and it is not clear whether these sites are located adjacent to existing residential properties. Details of the sites can be found on line as part of the representations submitted.

d) Impact on character and appearance of area

The proposed development will make minimal alterations to the premises and as such the character of the area is not considered to be harmed in this respect. The use as a nursery and associated noise and disturbance is considered to change the more tranquil and quiet nature of the area, particularly as experienced from the rear garden of neighbouring properties, but not to an unacceptable level. This matter is fully discussed above.

e) Accessibility/Highway Safety

The Institute of Highways and Transportation sets out acceptable walking distances in their guidance 'Providing for Journeys on Foot' (2000). At table 3.2 of that document it notes that for commuting and schools a desirable walking distance would be 500m, an acceptable walking distance would be 1000m and a preferred maximum walking distance would be 2000m. The ESCC Early Years Service has advised that for young children a mile or 1,600m is the upper limit as a suitable walking distance. As the Robsack Wood Community Primary

School is located approximately 1.2m from the Fern Road site, this would mean that for some of the households, they could indeed walk to Robsack Primary School. However, for many other households located in the catchment area of the Fern Road site, residents could not be reasonably expected to walk the Robsack Wood Community Primary School. It is clear therefore that whilst there are alternative day nursery's in the wider area, they are not sufficiently close to accommodate the need that the application now proposed would meet.

The site is accessible by road however its location is not ideal, noting the width of the road, parking on the road and the bus route all of which can at times cause some congestion at certain points of the day. So much so in fact that Stage Coach have written to object to the application. Despite this, the ESCC Highway Officer does not object to the application on these points. The ESCC Highways Officer notes that 10 parking spaces are required for the proposed use. 3 spaces are available on site, leaving a further 7 to be found elsewhere. The Highways Officer therefore requested a parking survey to demonstrate whether or not there was sufficient parking available in the road. The survey was carried out in September 2019 and concludes that there is sufficient parking available on the road. The Highways Officer accepts the findings of this Parking Survey and as such has withdrawn his objection. Therefore it is considered that the site and local road network is capable of supporting the proposed use and the site is considered accessible by means of private car.

Finally a bus stop is located a short distance from the site (50m) which means the site is accessible by means of public transport.

Following further queries raised within letters of objection regarding street parking and the Parking Survey Technical Note, the ESCC Highway Officer provided an additional response, clarifying their 'No Objection' as follows:

'I am satisfied that the results of the parking survey and the likely staggered drop off and collection times will not lead to a severe impact on the network particularly as parents/carers will only be stopping for a short time. The location of the nursery close to the junction is not ideal, but it looks like there is adequate forward visibility (due to wide verges and footways) which would reduce vehicle conflict.

I note the residents' comments in relation to differences in TRICS trip rates and those of the transport consultant along with residents' view that traffic flows are high in the area. Although Fern Road and Fernside Avenue link Gilsmans Hill and Harley Shute Road I do not consider Fern Road to be highly trafficked no more so than other similar residential streets so I do not believe the increase associated with a nursery will severely affect its operation.

The applicant's case is based on current staff and parents journey choices which of course could change, but I do not consider that mode changes for a handful of staff or 28 children will lead to dramatic changes. Most families want nearby childcare hence the high level of walking.

The Travel Plan will further manage the vehicle trips to the site. The applicants appear committed to staggered arrival and departure times (whereby parking will only be required for a short time) and to the use of active modes (through the provision of bikes and scooters etc.) The Travel Plan should be secured by condition. A staff member could be tasked with ensuring parent's park sensibly as part of the Travel Plan.' (see informative note 4).

The application is therefore considered acceptable in this respect.

f) Waste

The proposed plans show an area for the storage of wheeled bins in the rear garden,

separated from the children's play area. The wheeled bins will be moved from the rear to front garden on collection day. No objections are raised by Leisure and Amenities in this respect. Condition 4 secures the requirement for a bin store, as shown in the approved plans. The application is therefore considered acceptable in this respect.

g) Environmental Impact Assessment

Development does not fall in Schedule 2 and is not in a sensitive area

The National Planning Practice Guidance (Paragraph: 017 Reference ID: 4-017-20170728) states that "Projects which are described in the first column of Schedule 2 but which do not exceed the relevant thresholds, or meet the criteria in the second column of the Schedule, or are not at least partly in a sensitive area, are not Schedule 2 development."

This development is not within a sensitive area as defined by Regulation 2 (1) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and does not exceed the thresholds of schedule 2 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

7. Local finance considerations

It is understood that the operation of a day nursery will be subject to funding from Central Government in part, in accordance with consultation comments received from the ESCC Early Years Service.

8. Evidence of community involvement

None undertaken

9. Conclusion

The provision of a day nursery to support pre-education services in the locality is welcomed. It is considered that the proposed day nursery whilst bringing change to the immediate locality in terms of car movements and noise and disturbance, will not be to a level which is unacceptable or contrary to local plan policy.

The Human Rights considerations have been taken into account fully in balancing the planning issues.

10. Recommendation

Grant Full Planning Permission subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:

1433AH E 001 Existing plans
1433AH SL 001 Site Location and Block Plan
1433AH P 001 V4 Proposed floor plan
1433AH P 004 Existing and Proposed Garden Fence Elevations
3. With the exception of internal works the building works required to carry out the development allowed by this permission must only be carried out within the following times:-

08.00 - 18.00 Monday to Friday
08.00 - 13.00 on Saturdays
No working on Sundays or Public Holidays.
4. The development shall not be occupied until a bin store has been provided in accordance with approved details which shall be submitted to and approved in writing by the Local Planning Authority and shall thereafter be retained for that purpose.
5. The car parking spaces shown on the approved plan shall be provided prior to the occupation of the development hereby permitted and shall thereafter be retained for that use and shall not be used for any purpose other than the parking of vehicles.
6. The development shall not be occupied until a cycle parking area has been provided in accordance with details which have been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority and the area shall thereafter be retained for that use and shall not be used other than for the parking of cycles.
7. A comprehensive Travel Plan shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the use hereby approved. The Travel Plan shall be completed in accordance with the latest guidance and good practice documentation as published by the Department for Transport and/or as advised by the Highway Authority. The approved use shall operate in accordance with the approved Travel Plan.

8. Details of the enclosures, including elevations, of the bin, buggy and bicycle store shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of the use hereby approved. The approved enclosures, including elevations, of the bin, buggy and bicycle store, shall be erected prior to the commencement of the use hereby approved.
9. Details of the specification of an acoustic fence shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of the use hereby approved.
10. Prior to the commencement of the use hereby approved, an acoustic fence shall be erected in accordance with the specifications required by condition 9. The acoustic fence shall be erected on both side boundaries of the rear garden in accordance with the plans hereby approved and thereafter retained and maintained. Should the fence be damaged for any reason, it should be replaced within two months from the date the damage occurred.
11. No more than 12 children shall be allowed in the garden at any one time
12. Children shall be allowed in the garden only between the hours of 09:00 – 12:00 hrs and 14:00 – 16:00 hrs Monday to Friday for not more than an aggregate of 4 hours each day.
13. No amplified music or musical instrument shall be played or used outside. Any amplified music or musical instrument played or used inside the premises should not be audible in the outdoor areas.
14. No more than 28 children shall attend the day nursery at any one time, whether in the house or garden (this does not include pick up and drop off where there is likely to be an overlap).

Reasons:

1. This condition is imposed in accordance with the provisions of Section 91 of the Town and Country Planning Act 1990.
2. For the avoidance of doubt and in the interests of proper planning.
3. To safeguard the amenity of adjoining residents.
4. In order to secure a well planned development
5. To ensure an adequate level of off-street parking to serve the development and to ensure the safety of persons and vehicles entering and leaving the access and proceeding along the highway.
6. In order that the development site is accessible by non-car modes and to meet the objectives of sustainable development

7. To encourage and promote sustainable transport.
8. To secure a well planned development
9. In order to protect neighbouring residential amenity.
10. In order to protect neighbouring residential amenity
11. In order to protect neighbouring residential amenity
12. In order to protect neighbouring residential amenity
13. In order to protect neighbouring residential amenity
14. In order to protect neighbouring residential amenity

Notes to the Applicant

1. Statement of positive engagement: In dealing with this application Hastings Borough Council has actively sought to work with the applicant in a positive and proactive manner, in accordance with paragraph 38 of the National Planning Policy Framework.
2. Failure to comply with any condition imposed on this permission may result in enforcement action without further warning.
3. The applicant is advised that the painting of white line markings to the front of the site will allay safety concerns regarding waiting vehicles opposite the junction with Fernside Avenue. If the applicant wishes to pursue this then an application for a license should be made to East Sussex County Council.
4. The applicant is advised that a staff member should be present to supervise drop off and collection times to ensure that parent's park sensibly as part of the Travel Plan.

Officer to Contact

Mrs E Meppem, Telephone 01424 783288

Background Papers

Application No: HS/FA/19/00266 including all letters and documents