



Application Reference:	P1104.19
Location:	1 Ambleside Avenue
Ward:	Elm Park
Description:	Change of use from Dwelling (C3) to Nursery (D1)
Case Officer:	Cole Hodder
Reason for Report to Committee:	A Councillor call-in has been received.

1. BACKGROUND

- 1.1 The application has been called in by Councillor Barry Mugglestone.

2 SUMMARY OF KEY REASONS FOR RECOMMENDATION

- 2.1 The proposed change of use is regarded as being acceptable, having overcome the earlier refusal reasons. It is not considered to give rise to any adverse impact upon the functioning of the highway, nor the amenity of neighbouring occupiers through measures negotiated with the applicant. Any residual harm is capable of being mitigated by planning conditions to control the use. It is not considered that there are any grounds with which to withhold permission.

3 RECOMMENDATION

- 3.1 That the Committee resolve to GRANT planning permission subject to conditions to secure the following matters:

Conditions

1. Time Limit 3 years - Development must be commenced no later than three years from the date of this permission.
2. Accordance with plans - The development must not deviate from the approved plans.
3. Hours of use: Monday to Friday 07:30 to 18:30, not at all on Saturdays, Sundays, Bank or Public holidays.

4. Maximum number of children at the property at any one time not to exceed thirty-seven children with a maximum of eight children at any time using the rear garden as outdoor play space as demarcated on layout plan provided with buffer to neighbour and acoustic fencing in arrangement shown to be installed and maintained for the lifetime of the development
5. The outdoor play-space to the rear of the building shall be used only between the hours of 09:30 and 16:00. No other outdoor areas of the site to be used for outdoor play/teaching use
6. Non-opening windows/scheme of ventilation, self-closing doors to be kept operational
7. Further details of noise attenuation/insulation per specification made by Environmental Health upon nearest sensitive receptor. This shall include those details already provided with the current submission or refinement of those measures considered at the party wall to the satisfaction of the Local Planning Authority prior to the use commencing
8. Submission of Travel Plan to include measures encourage staff and visitors to travel to the site by means other than by private car. The plan as approved shall be monitored and reviewed on an annual basis for three years and a copy of that review and action plan arising shall be submitted to the Local Planning Authority
9. Cycle Storage - Details of cycle storage provision
10. Refuse and recycling - Details of refuse storage

4 PROPOSAL AND LOCATION DETAILS

4.1 Proposal

- 4.2 Permission is sought for the change of use of the existing dwelling house to a Day Nursery.
- 4.3 As with the earlier submission made the intensity of the proposed use has been reduced with the applicant stating that 6 full time members of staff would be employed.
- 4.4 The day nursery would make provision for a maximum of 37 children at the premises with a maximum of eight children at any time using the rear garden as outdoor play space.

4.5 Site and Surroundings

4.4 The application site comprises of one half of a pair of semi-detached dwellings, located on the corner of Ambleside Avenue and Rosewood Avenue.

4.5 There is parking for at least two vehicles on hard-standing to the front of the site.

4.6 Planning History

The following planning decisions are relevant to the application:

4.6 P0717.17 – Change of Use From Dwelling (C3) to Day Nursery (D1)

13 full time members of staff and 3 part time members of staff, number of children on site 54 total. No details of how garden area would be used, nor methods of noise mitigation.

REFUSED for following reasons:

- The proposed change of use would, by reason of its internal arrangement and the location of the proposed outdoor play area, result in an unsatisfactory relationship by way of noise and disturbance which would be to the detriment of the amenity and living conditions of neighbouring occupiers. The proposed development is therefore contrary to Policy DC61 of the LDF Core Strategy and Development Control Policies DPD
- The proposed single storey side extension would, by reason of its excessive overall proportions relative to the main dwelling, represent a disproportionately large addition lacking in subservience therefore contrary to Policy DC61 of the LDF Core Strategy and Development Control Policies DPD and the design principles of the Residential Extensions and Alterations SPD

4.7 P1754.18 - Change of Use From Dwelling (C3) to Day Nursery (D1)

6 Fulltime members of staff, 37 Children total with only 10 using the rear garden at any one time.

REFUSED for following reason:

- The proposed change of use would, by reason of its internal arrangement, associated capacity and the location of the proposed outdoor play area, would result in an unsatisfactory relationship by way of noise and disturbance which would be to the detriment of the amenity and living conditions of neighbouring occupiers. The proposed development is therefore contrary to Policy DC61 of the LDF Core Strategy and Development Control Policies DPD.

- 4.9 The applicant sought to address issues raised in the earliest submission, as is evident in that only a sole refusal reason was attached to the later application. This was through a reduction in the intensity of the proposed use with a reduction in children at the premises and the number of staff.

5 LOCAL REPRESENTATION

- 5.1 A total of thirteen neighbouring properties were notified about the application and invited to comment.
- 5.2 The number of representations received from neighbours, local groups etc in response to notification and publicity of the application were as follows:

No of individual responses: 77 - 28 objections, 33 letters of support.

The following Councillors made representations:

Councillor Barry Mugglestone

- The Noise and Disturbance to residents from the use of this facility.
 - The Traffic that will be generated in the area
 - Highway safety
 - Adequacy of Parking.
 - The proposed change will result in an unacceptable overspill onto the highways and adjoining roads, which will affect highway safety and residential amenity and is therefore contrary to policies DC61, DC32 and DC33 of the Core Strategy.
 - Also we have Nurseries within walking distance who are not at full capacity, so there is no call for another Nursery so close, especially in a residential street.
- 5.3 All material matters raised will be considered when forming a recommendation by officers.
- 5.4 It is acknowledged that there are other Nurseries within the locality, however no technical evidence has been provided by any interested party which conclusively states that they are in fact at capacity. In fact, representations made in favour of the proposed change of use suggests that there is demand for a day nursery in this location. Furthermore, the lack of demand for a facility is not normally a material planning consideration as this is something that should usually be left to the market. Need for a facility can be a material consideration.
- 5.5 There is information held by the Council which indicates that there is a clear deficit in early years' places in the Elm Park Ward. The Childcare Sufficiency Report 2019-2021 published on the Council's website highlights that the Council is projecting a deficit of childcare places in 2019/20 for 2, 3 and 4 year olds in this ward. This existing deficit is a precursor to continued lack of early years' places in the Elm Park Ward and a continued deficit would not be

consistent with the Council's legal duty to provide early years places for working parents.

Ward	Population of 2, 3 and 4 year olds	Number of eligible 2 year olds	Number of Ofsted registered childcare places available
Elm Park Ward	522	36	264

5.6 Other matters raised will be addressed in the substance of this report.

5.7 Representations Objections

- Inadequate parking
- Highway Safety
- Too many nurseries
- Noise and disturbance
- No dedicated facility for pick-up drop off
- Loss of housing
- Increased movement to and from the site

5.8 Residents suggest that the application is identical to earlier submissions, however this is not the case. Whilst the applicant continues to seek a proposed change of use from C3(A) (Dwelling house) to D1 (Day nursery) the present submission is materially different to those earlier applications in response to refusal reasons given as is evidenced in the history section of this report (Para 4.6).

5.9 Some matter raised such as impact on services are not material planning considerations. Similarly, inconsiderate parking of vehicles held to be in association with existing Nurseries in the locality whilst understandably a frustration for residents is not necessarily material in planning terms. Vehicles obstructing driveways out of perceived convenience is something that cannot be controlled by the planning system. Matters of highways and parking will be reliant on the availability or unavailability of on-street parking within the locality and whether there is sufficient capacity. These are matters which have previously been considered and found to be acceptable.

5.10 Where material other matters raised will fully be considered in the substance of this report.

5.11 Letters of support

- High demand for proposed use
- Good location in close proximity to the station
- Employment opportunities
- Applicant is existing provider within the area making positive contribution to community

6 MATERIAL PLANNING CONSIDERATIONS

6.1 The main planning issues raised by the application that the committee must consider are:

- Principle of development/Loss of housing
- Design/appearance
- Impact on neighbouring amenity
- Implications for highways, pedestrian access and parking
- Mitigating factors

6.2 Principle of development

As outlined in the Childcare Act 2006 Section 13 states it is a statutory duty of London Borough of Havering Authority to undertake a Childcare Sufficiency Assessment to ensure there is sufficient childcare provision available for families in their area. Havering's Childcare Sufficiency Assessment (CSA) highlights areas of need within the Borough. The CSA 2011 supports the evidence that there is a fundamental shortage of childcare provision. There is, therefore, a real need to increase the number of childcare places within this area.

6.3 The loss of housing is a material consideration, the criteria for which is set out in LDF Policy DC5. Policy DC5 accepts the loss of housing where it involves the provision of essential community facilities, for example health and education, which are necessary to meet the specific needs of the community; or the proposal is necessary to deliver mixed and balanced communities. The loss of one dwelling is not regarded as being overly detrimental to local housing stock, particularly when weighed up against the identified need for early years' places in the Elm Park Ward. The loss of the functioning of the subject property as a dwelling house is not regarded as presenting a barrier to the change of use in principle.

6.4 Nevertheless the property is located in a densely populated residential area and whilst there are other existing commercial uses within the locality, including other D1 uses, the nature of the use proposed was viewed previously to present issues which were in direct contrast to the aims of other policies within the Core Strategy. This was and is particularly evident given the attached nature of the premises and close relationship with the adjoining premises which is in residential use. The details of the proposed change of use and the measures proposed by the applicant therefore require further consideration.

6.5 Design/appearance

There would be little in the way of outward changes which would suggest that the premises would have changed use which would be visible from the street/surrounding premises. The provision of cycle storage forward of the principal elevation and "buggy park" would benefit from further clarification however it is accepted that this detail could be secured by condition in the event of approval.

- 6.6 There would not appear to be any grounds to substantiate a decision to refuse planning permission based on the limited visual impacts associated with the proposed change of use.

6.7 Impact on neighbouring amenity

The rear garden area is again set aside for use as an outdoor play area in connection to the day nursery. The view taken previously is that the provision of a day nursery would have had an unacceptable impact on the quality of life of surrounding neighbouring residents by way of noise/disturbance associated with the use.

- 6.8 It is acknowledged that the current proposals show a reduction in the scale of the business operation. A reduction in staff from 13, to 6 and a reduction in the number of children accommodated at the premises at any given time from 54 to 37. The number of children was recognised to remain significant. The impacts of the use of the premises as a Day Nursery cannot be likened to that of the existing lawful use as a dwelling house. Officers then took the view previously that consistent with the earlier submission that the use of the premises as a Day Nursery would produce noise levels and activity significantly louder and more sustained than that which could be associated with the lawful use of the premises.

- 6.9 A determining factor in reaching a decision to refuse permission was that no assurance had been provided that the common wall shared with the adjoining neighbour would have been sufficiently sound proofed so as to prevent noise transferral. Whilst outside areas could reasonably be controlled, it was not felt that this could be secured by planning condition as it would have been intrinsic to whether the use would have caused harm to neighbouring amenity, the impacts of which are broadly accepted to be focused on the adjoining property.

- 6.10 This was especially concerning given the use of those rooms adjacent to the party wall and the location of primary rooms in the adjoining property. The applicant in the current submission has provided details suggested by a noise consultant which include the provision of measures at the party wall, which have been considered by the Council's Environmental Health team. Whilst these details were not discouraged and offer some assurances in contrast to the earlier submission, nevertheless an objection was made through the impact on neighbouring amenity, principally on the impact through the use of outdoor areas and from openable windows.

- 6.11 With regards to the potential for external noise, this would be likely to arise from open windows and doors as well as the use of the outdoor space and a condition is now imposed requiring windows are non-openable with a scheme of ventilation to be submitted. However, as with the earlier submissions made for the site it is accepted that this issue and those relating to the external play area may not be relevant throughout the entirety of the year.
- 6.12 It is inevitable that there will be a certain level of noise and disturbance from the activities and play undertaken by the children, in the same way that the playground of a school may give rise to such noise and disturbance. This is a key concern due to the close relationship of the site to nearby residential properties. Dialogue with the applicant saw the play-space relocated away from the shared boundary in an effort to move activity away from the shared boundary and towards the roadside where there might be some level of ambient noise to be expected given the proximity to the local centre and existing day-nursery use.
- 6.14 A revised plan provided by the applicant shows a 2.4m high acoustic fence to be installed at the boundary over a reduced depth to that initially submitted. The neighbour benefits from a single storey extension and the overall height is not regarded as especially harmful. This would serve to offer some level of screening for the area of garden immediately adjacent to the rear of the attached property. Furthermore, in contrast to earlier submissions made the applicant proposed to separate the play area from neighbours by 2.0m to be separated by planters demarcating the area to allow for activity to be pulled away in so far as would be practicable. The applicant has also agreed to a reduction in the number of children using the rear garden to eight, a further reduction in two over the ten previously considered.
- 6.13 An extensive dialogue was had with the developer and their noise consultant and the objection made by Environmental Health colleagues was subsequently withdrawn, subject to conditions to control the use of the outside space and provision of further details to be secured by planning condition over further attenuation methods for the building. This would extend to a condition requiring that windows are non-openable, to be supported by a ventilation strategy to justify such an arrangement as indicated previously. These measures are regarded as being necessary in any event from a safeguarding perspective and were accepted by the applicant.
- 6.14 Whilst not raised in the most recent decision to refuse permission, representations made express concern over noise and disturbance in a broader sense through movement to and from the site. The impacts on the wider locality through traffic noise have been considered and found to be insubstantial in order to justify a decision to refuse permission when considering the earlier submission. There would only be short periods where noise from vehicle movement and general activity would occur and by their nature the flexibility of day-nursery uses is that pick-ups are generally staggered unlike a Junior or Infants school where activity can be concentrated.

- 6.15 Noise impacts in this respect are held then to be very low. In view of the reduced intensity of the proposed use, the additional vehicles on the road network would be low as there are already significant traffic movements in the area. The Design manual for Road and Bridges suggests that a 25% increase in traffic would result in a 1 dB(A) increase in noise level across the day so with the number of vehicles expected, the increase would be imperceptible.
- 6.16 **Implications for highways, pedestrian access and parking**
The subject premises is located on the corner of Rosewood Avenue and Ambleside Avenue. Both roads were observed to be heavily trafficked, which is reasonable considering the close proximity to a Minor Local Centre.
- 6.17 One of the previous refusal reasons was focused on the highways impacts associated with the development. The intensity of the proposed use was considered to be excessive with the site unable to accommodate the required level of parking for the staff indicated. This was resolved in the subsequent planning application, the details of which have been replicated in this submission.
- 6.18 Whilst it is accepted that parents picking up and dropping off children would likely park on Ambleside Avenue or to a lesser extent St Andrews Avenue, the reduced intensity of the D1 use in terms of the number of children to be accommodated and staffing levels which could be secured by planning condition has resulted in no objection being made by the Highway Authority.
- 6.19 It is on this basis that it would not appear possible to substantiate a refusal reason on the highways/parking impacts associated with the development.
- 6.20 However; in view of concerns raised a travel plan would be required by planning condition to demonstrate measures to encourage staff and visitors to travel to the site by means other than by private car. The plan as approved shall be monitored and reviewed on an annual basis for three years and a copy of that review and action plan arising shall be submitted to the Local Planning Authority.
- 6.21 **Mitigating factors/Planning Balance**
It is clear from representations made that there is demand both for and against the proposed change of use. There is an identified need which has been evidenced in this location, contrary to representations made against the proposed change of use.
- 6.22 The applicant has worked proactively with the Local Planning Authority and it is considered that the conditions imposed and measures put forward by the applicant following dialogue with the Council would overcome the earlier decisions made to refuse permission.
- 6.23 The Local Authority is required by legislation to secure early education entitlement places by offering 570 hours a year over no fewer than 38 weeks for every child in the borough from the relevant date; until the child reaches compulsory school age (the beginning of the term following their fifth birthday).

| This is equivalent to 3 & 4 year olds accessing 15 hours of early years' provision per week across 38 weeks. In September 2017, this 15 hour offer increased for working families who are entitled to 30 hours of childcare per week for 3 & 4 year olds.

- 6.24 Any residual harm not capable of being mitigated by the conditions to be imposed in the event of approval needs to be balanced against the Local Authority's legal duty to secure sufficient early education entitlement places in the Elm Park Ward, for which there is a projected deficit in the 2019-2021 Childcare Sufficiency Report.

7 Conclusion

- 7.1 All other relevant policies and considerations have been taken into account. Planning permission should be granted for the reasons set out above. The details of the decision are set out in the RECOMMENDATION.