

KENARTH, COURT LANE, PORTSMOUTH PO6 2LG.

**CHANGE OF USE FROM HOUSE IN CLASS C3 (DWELLINGHOUSE) TO CHILDCARE NURSERY (CLASS E(F)) WITH ANCILLARY RESIDENTIAL ACCOMMODATION (RETROSPECTIVE)**

[22/00524/PLAREG | Change of use from House in Class C3 \(dwellinghouse\) to mixed use Class C3 \(dwellinghouse\) and Childcare Purposes \(Class E\(f\)\) | Kenarth Court Lane Portsmouth PO6 2LG](#)

**Application Submitted By:**

Dreamcatchers Nurseries  
FAO L. Benford.

**RDD:** 26<sup>th</sup> July 2022.

**LDD:** 20<sup>th</sup> September 2022.

**1. SUMMARY OF MAIN ISSUES**

- 1.1 The application has been brought to the Planning Committee for determination due to the number of objections (14), an objection from Highways, and because Cllr. Boshier has called the application in.
- 1.2 The main issues for consideration are:
  - The principle of the development;
  - Impact on residential amenity;
  - Highway Impacts;

**2. SITE, PROPOSAL AND RELEVANT PLANNING HISTORY**

Site and Surroundings

- 2.1 The application relates to a detached bungalow that has been in use as a children's nursery (Use Class E(f)) since January 2022.
- 2.2 The surrounding area is largely residential in nature with Court Lane Infant and Junior School to the south west of the site. The surrounding area has a typically suburban appearance and is comprised of detached bungalow and chalet bungalows with a number of two storey houses. The property has a front and back garden.
- 2.3 The application site is not subject to any specific Local Plan Designations.
- 2.4 The road has no parking restrictions.

Proposal

- 2.6 Planning permission is sought for the retention of the current use as a children's nursery (Use Class E(f)) with ancillary Nursery Staff accommodation. The nursery operates between the hours of 7.30 - 4.00 Monday to Friday with 3 childcare employees and one in the office. 36 children in total are registered at the nursery with usually no more than 15 children a day in attendance. There is however one day a week when 16 children attend, and one where 18 children a day attend.
- 2.7 Ofsted have registered the nursery, based on the area of the building, for up to 25 children. The applicant however chooses to operate at below this. The staff set up the children's toys in the two

main rooms, conservatory and garden in the morning. These are subsequently cleared away at 4pm and the two rooms become available for the resident staff member. The office and kitchen are ancillary to the nursery while the bedroom is excluded from the nursery use. The play equipment includes small toys, lego, toy cars, dinosaurs, paints and books etc. There are no large climbing frame structures or other such play equipment.

- 2.8 The internal area comprises open nursery space with ancillary office. All internal areas including the kitchen and bedroom are used by the resident staff member in the evenings and weekends thereby allowing for full use of the bungalow in the evenings and weekends.
- 2.9 With the exception of a small air conditioning unit the use has not resulted in the change to the exterior of the building. There is a driveway accessible via a dropped kerb.
- 2.10 The business had initially operated from Bedhampton Dance Studios during the day when the studios were unused. Following a change in the commercial arrangements with the Dance School and difficulties finding another location, the applicant chose to use their property at the application site.



**Location Plan**

Planning History

- 2.11 There are no records of any planning history for the site.

**3 POLICY CONTEXT**

- 3.1 In addition to the aims and objectives of the National Planning Policy Framework (July 2021), the relevant policies of the Portsmouth Plan (2012) would include: PCS17 (Transport), and PCS23 (Design and Conservation) and Saved Local Plan Policy DC45 (Loss of Housing).

## 4 CONSULTATIONS

### Environmental Protection

- 4.1 The Environmental Protection Officer (EPO) has raised no objection to the proposal.
- 4.2 The officer has referred to a noise complaint that was made to the Environmental Protection Department. Following an investigation, the EPO has confirmed there is no nuisance caused by the noise arising from the use of the building and that Environmental Health legislation could be used to enforce against such noise issues in the future if they were to arise.

### Highways Engineer

- 4.3 The Highways Authority objects on the basis that no Parking Survey was submitted, the potential for conflict / parking demand with the school, and the likelihood of errant parking behaviours which may obstruct accesses and crossing points. Advice given on the scope of a parking survey, were the Applicant minded to carry one out.

## 5 REPRESENTATIONS

- 5.1 In addition to two representations from two Local Councillors (below), a total of 15 letters in support and 14 objections have been received,
- 5.2 The objections raised the following issues:
- Noise from children prevents residents enjoying their home;
  - The use would operate 51 weeks of the year;
  - The site is unsuitable due to the school being in the same road;
  - Traffic from the nursery is unacceptable;
  - The character of the area would change forever;
  - The area is residential in nature and therefore unsuitable for such a use;
  - Traffic and parking is unacceptable and an 'accident waiting to happen'.
  - The smell from rubbish (nappies) is unacceptable;
  - The site is untidy and unkempt.
  - Restrictive covenants would prevent the use from occurring;
  - The area is occupied by retirees and so unsuitable for a nursery;
  - Plenty of other nurseries in the area.
- 5.3 The letters in support raise the following stated benefits:
- The small intimate nursery setting is perfect for encouraging difficult children and those with learning conditions to settle and progress;
  - The majority of parents live in the area and walk to the nursery;
  - Noise is negligible compared to the school across the road;
  - The nursery is a perfect setting for children;
  - The nursery creates additional jobs for those in the area;
  - All staff are friendly and professional;
  - The location of the nursery is invaluable for local working parents and those in the NHS; and
  - Parents using the nursery arrive before or after the school run times
- 5.4 Cllr. Boshier has submitted an objection, on the grounds of persistent noise, traffic and parking, domestic refuse being used for a business, failure of the applicant to engage with local residents, internal changes, and concerns that the deeds may not permit a business use. The Councillor notes that most of the supporters do not live locally, so would have to drive..

5.5 Cllr. Norton has written in support of the scheme: vital service for working parents, a good learning environment and which benefits the local community including allowing parents to work, most parents will walk to the site. Limited concern about noise, which the applicant should address with neighbours. The business of Court Lane is restricted to term times.

## 6 COMMENT

6.1 The main issues for consideration are:

- The principle of the development;
- Noise Issues;
- Highways Issues;
- Other Issues.

### The principle of the development

6.2 The site comprises a bungalow that the applicant started operating the nursery from. Since there is an element of residential accommodation retained, it is deemed ancillary to the nursery, but effectively there has been a 'technical loss' of the dwellinghouse.

6.3 Saved Local Plan Policy DC45 which seeks to prevent the loss of housing except for three circumstances where such loss may be acceptable. These include ground floor premises in town centres, at residential site allocations or as part of a larger residential proposal, and in areas deficient of community facilities.

6.4 Policy DC45 is broadly consistent with the objectives of the NPPF in seeking to boost the level of housing through protecting the Council's existing housing stock. Paragraph 8 of the NPPF (2021) states that sustainable development has an economic, social and environmental objective and that such objectives are mutually supportive and interdependent.

6.5 The technical loss of the dwelling would weigh against the scheme, particularly as the City Council, at 3.8 years, cannot demonstrate an up-to-date 5 year housing land supply. However, the development results in the loss of a single dwelling only and as such this attracts only moderate weight in this case.

6.6 The use of the bungalow has resulted in a new business which, as set out in paragraph 81 of the NPPF, such employment opportunities attract significant weight. Moreover, the provision of new jobs are also an additional social benefit.

6.7 Furthermore, the provision of the children's day nursery provides for an additional community facility that benefits working parents and the children themselves through providing a high quality early years education. Such a benefit, pursuant to Section 8 of the NPPF, attracts great weight.

6.8 The moderate impact through the technical loss of a dwelling is deemed outweighed by the employment and significant social benefits associated with the change of use thereby ensuring the scheme is acceptable in principle.

### Noise Impacts

6.9 Policy PCS23 of the Portsmouth City Plan (2012) ensures new development protects the amenities of and ensures a good standard of living environment for neighbouring and local occupiers.

6.10 The use, based on the letters of objection, has given rise to an increase in the noise from the site that objectors allege adversely impacts the use of their properties.

6.11 The nursery operates from 7.30am to 4.00pm Monday to Friday and typically has 15 - 18 children attending. Children periodically use the rear garden area as outdoor play space.

- 6.12 While Ofsted have registered the nursery for up to 25 children at any one time, the applicant has chosen to keep the numbers below this to allow for a more intimate setting that they considered enhances the quality of the service the nursery provides to aid child learning and development.
- 6.13 The Environmental Protection Officer has raised no objection to the application and it is agreed that there are no noise related grounds on which to refuse the application. The Environmental Protection Officer response refers to a noise complaint that was made in August 2022 alleging unreasonable and persistent noise from the property. This has been investigated and no noise nuisance has been proven. They have also confirmed that should any noise issue arise in the future these can be dealt with through the appropriate nuisance legislation. With existing legislation such as The Environmental Protection Act (1990) there is legislation available for ensuring noise from the property is of an acceptable level.
- 6.14 The noise complaint was assessed and investigated on the basis that between 15 and 18 children attend the nursery at any one time. As such, it is considered that with the use occurring during the working day and with evenings and weekends and public/bank holidays being free the noise is not considered unacceptable and would accord with Policy PCS23 of the 2012 Portsmouth Plan. It is however considered appropriate to impose a restrictive condition restricting the use of the building to a nursery (Use Class E(f)). Such a condition would restrict the use and therefore the level noise and parking issues that may arise with other uses such as retail and restaurant/cafes.

#### Highway Impacts

- 6.15 Policy PCS17 of the 2012 Portsmouth Plan ensures new developments are sited in a sustainable location close to public transport links to encourage non-car based travel. Paragraph 111 of the NPPF states that development should only be prevented on highway grounds if it would have an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe.
- 6.16 The Local Highways Authority (LHA) raised an objection re parking (lack of survey) and other highway conflicts.
- 6.17 The applicant had apparently already undertaken their own Parking Survey, prior to application submission - the survey was on the afternoon of Friday 1<sup>st</sup> July 2021, i.e. prior to the nursery operating from the application premises. The Parking Survey comprises a series of photographs and map showing the spaces available between 1455 and 1510 hours. The survey shows that there were in the region of some 35 - 40 on-street parking spaces in the vicinity. The applicant submitted this survey following the comments of the LHA. The LHA assessed the survey and maintains a highways objection. The LHA notes that survey pictures appear to show errant parking and that the parking associated with the nursery would exacerbate the situation and as such the location is not suitable for such a use. Since that survey, the nursery has gone on to actually occupy the application premises and to operate. As such, the LPA has been able to assess the proposed use in operation.
- 6.18 The Case Officer visited the site on Thursday 15<sup>th</sup> September, between the hours of 0645 and 0915. The Case Officer observed 8 parents arrive by car. One of the parents appeared to be undertaking a joint trip to both the nursery and the school. 7 children were dropped off on foot, together with three members of staff arriving. Of the three staff, one parked outside, one was dropped off and one walked. The Case Officer's site observations corroborate the applicant's comments that approximately half of the children live close by and attend nursery on foot. Given that nursery parents may arrive before and after the school run peak, and that the number of car visits is apparently limited, it would appear the impact of the nursery on local parking and road conditions is limited and acceptable.
- 6.19 Whilst Court Lane was observed to be relatively busy in the morning, albeit with relatively slow traffic speeds, this was apparently more associated with the school than any other factor, which is characteristic of many schools throughout the City. Such traffic however is confined to short periods of the day. The traffic associated with the nursery would represent such a small

percentage of the wider Court Lane traffic and as such there are no highways reasons to refuse planning permission pursuant to the objectives of Policy PCS17.

- 6.20 Furthermore, unlike the school which has set drop off and pick up times at the start and end of the school day, the nursery has no such set times. Parents will drop off and pick up their children over a much longer time period thereby ensuring that the minor traffic associated with the nursery is also spread out. Such a pattern does result in an unacceptable impact on highway safety, which is the NPPF test.
- 6.21 Condition 2, restricting the use of the property to that of a nursery will also restrict the potential, vehicle movements that other Class E uses could give rise to. It is considered that subject to the imposition of Condition 2, the scheme accords with Policy PCS17 of the Portsmouth Plan and is therefore acceptable in highway terms.

#### Other Issues

- 6.48 One of the objectors referred to the smell associated with nappies, and the nursery waste, being collected by the domestic kerbside waste collection. The applicant has confirmed that they have a commercial waste collection arrangement with Biffa Waste Services that collects all waste from the property fortnightly.

#### Conclusion

- 6.51 Having regard to all of the material planning matters which have been explored above, it is considered that the change of use to a children's day nursery is appropriate in planning terms. Subject to the ~~two~~ conditions set out below it is recommended that planning permission be granted.

## **RECOMMENDATION                      Conditional Permission**

#### Approved Plans

1) Unless agreed in writing by the Local Planning Authority, the permission hereby granted shall be retained in accordance with the location plan, and the floor plan received by the Local Planning Authority in July 2022.

Reason: To ensure the development is implemented in accordance with the permission granted.

#### Retention of Use

The use hereby permitted shall be restricted to a day-nursery for children (Use Class E(f)) (with ancillary residential use permitted) and for no other use unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of highway safety and residential amenity in accordance with Policies PCS17 and PCS23 of the 2012 Portsmouth Plan.

## **PRO-ACTIVITY STATEMENT**

In accordance with the National Planning Policy Framework the City Council has worked positively and pro-actively with the applicant through the application process, and with the submission of amendments an acceptable proposal has been achieved.