

6th JUNE 2023 PLANNING COMMITTEE

6B PLAN/2022/0627

WARD: Hoe Valley

LOCATION: 87 Liquorice Lane, Woking, Surrey, GU22 9NY

PROPOSAL: Change of use of dwelling (Use Class C3) to a mixed use as a dwelling and childminding business (Use Class E) caring for 9x 1-4 year olds Monday-Friday 7.30am-17.45pm (Retrospective).

APPLICANT: Miss Sasha Keenoy

OFFICER: David Raper

REASON FOR REFERRAL TO COMMITTEE:

The recommendation includes enforcement action and the decision on whether to issue an Enforcement Notice falls outside the Scheme of Delegation.

SUMMARY OF PROPOSED DEVELOPMENT

Change of use of dwelling (Use Class C3) to a mixed use as a dwelling and childminding business (Use Class E) caring for 9x 1-4 year olds Monday-Friday 7.30am-17.45pm (Retrospective).

PLANNING STATUS

- Urban Area
- Thames Basin Heaths Special Protection Area (TBH SPA) Zone B (400m-5km)

RECOMMENDATION

REFUSE planning permission and recommend enforcement action.

SITE DESCRIPTION

The proposal site comprises a modest two bedroom, two storey, mid-terrace dwelling. The downstairs comprises a kitchen, living area and WC and upstairs are two bedrooms and a bathroom. The property has off-street parking for one car and an enclosed rear garden of approximately 10m in depth.

RELEVANT PLANNING HISTORY

- PLAN/2013/0081 - Demolition of all existing structures on site. Erection of 371 residential units (27x1 bed, 122x2 bed, 154x3 bed, 68x4 bed), and associated car parking (651 spaces), open space and landscaping, play areas and new access arrangements – Permitted 10.06.2013

CONSULTATIONS

- **Environmental Health:** No objection.
- **County Highway Authority:** No objection.

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REPRESENTATIONS

Objections:

Three objections have been received raising the following summarised concerns:

- The surrounding area is cramped and made up of houses with small gardens. The area was not designed to accommodate childcare businesses of this scale
- A childminding business in such a tight neighbourhood creates stress on the local community, especially with the increased noise and traffic
- Children in the garden generate a lot of noise
- The noise generated from the childminding business does not allow us to work from home with the windows open or enjoy our garden in the daytime
- Music is often played which adds to the noise
- The property has parking for one car but occupies three spaces full-time (the childminder plus two employees)
- Parents who drop off children park inconsiderately and dangerously
- Visitor parking is constantly occupied by the employees of the business
- Concerned about a commercial venture operating in a purely residential area

Applicant's points:

During the course of the application the applicant has put forward several points in support of their application:

- Children do not use the garden before 10am, between 11:20am and 1pm or after 4pm
- After 4pm we have a maximum of three children
- Collections are staggered and take place at 1pm, 3pm, 4pm, 4:30pm and 5pm
- Parents have been asked to only use visitor parking bays for pick-ups and drop-offs
- Children aged 1-4 are not noisy
- We offer a valued service to the community
- I provide employment for two staff members who are doing qualifications

RELEVANT PLANNING POLICIES

National Planning Policy Framework (NPPF) (2021):

Section 12 – Achieving well-designed places

Woking Development Management Policies DPD (2016):

DM7 – Noise and Light Pollution

Woking Core Strategy (2012):

CS21 – Design

Supplementary Planning Documents:

Design (2015)

Parking Standards (2018)

Outlook, Amenity, Privacy and Daylight (2022)

PLANNING ISSUES

Background:

1. Section 57 of The Town and Country Planning Act 1990 (as amended) states that planning permission is required for the carrying out of any development of land. Section 55 defines the meaning of 'development' as follows:

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*“Subject to the following provisions of this section, in this Act, except where the context otherwise requires, “development,” means the carrying out of building, engineering, mining or other operations in, on, over or under land, **or the making of any material change in the use of any buildings or other land.**”*

2. The Town and Country Planning (Use Classes) Order 1987 (as amended) assigns different Use Classes for different uses of land and buildings and establishes what uses and changes of use can be carried out without the need for planning permission. A dwellinghouse is Use Class C3 and childminding on a small scale can ordinarily being carried out from a dwelling as long as it remains ancillary to the residential use and does not result in a ‘material change of use’. There is no statutory definition of ‘material change of use’ however there must generally be a significant difference in the character and activities compared to the previous situation for a material change of use to occur. Establishing whether a material change of use has occurred is a matter of fact and degree and is judged on a case-by-case basis.
3. In this case, the use involves caring for 9x 1-4 year old children Monday-Friday 7.30am-17.45pm. The childminding primarily takes places from the ground floor of the property and the rear garden is used for outdoor play and learning. The applicant indicates that two apprentices are employed in addition to themselves. Whilst the applicant lives at the property, the scale and intensity of this use, the need for employees and the nature of the property in question, means that the proposal is considered to result in a material change of use of the property to a mix of residential and childminding.
4. The applicant was advised by the Council under an informal ‘Permitted Development Enquiry’ on 01.04.2019 that a material change of use of the property would require planning permission. The applicant was advised that a childminding business with up to five children and no staff members was unlikely to require planning permission as it would not result in a material change of use.

Impact on Neighbouring Amenity:

5. Section 12 of the NPPF (2021) states that planning decisions should ensure that a ‘high standard of amenity’ is achieved for existing and future residents whilst Woking Core Strategy (2012) policy CS21 ‘Design’ states that new development should “*Be designed to avoid significant harm to the environment and general amenity, resulting from noise, dust, vibrations, light or other releases*”.
6. The proposal site comprises a modest two bedroom, two storey, mid-terrace dwelling. The proposals site forms part of a modern housing development developed from 2013. The surrounding area is relatively high density with limited spacing around dwellings. The host dwelling is mid-terrace and is in close proximity to a number of residential neighbours. The host dwelling is attached to No.85 and No.89 Liquorice Lane and borders No.8 and No.10 Inwood Close to the rear.
7. The application seeks planning permission to use the property for a childminding business in addition to the lawful residential use. The use involves caring for 9x children between the ages of one and four and operates Monday to Friday between the hours of 7:30am and 17:45pm. The property is already being used for childminding and is therefore retrospective.
8. Concerns have been raised about the impact on neighbouring amenity arising from noise and general disturbance arising from the childminding use. The scale of the

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proposed childminding use has the potential to impact significantly on neighbouring amenity. Regular comings and goings and noise from children playing in the rear garden can be associated with the normal domestic use of a dwelling and is a feature of residential areas. However, this is usually more likely to be sporadic in nature and spread throughout the day and week. The proposed use would result in a more intense and concentrated level of activity on a daily basis. The proposed use would allow up to 9x children at any one time being cared for at the property which is considered to exceed what would normally be expected from a modest two bedroom property and has the potential to generate significant noise and disturbance. Whilst it is acknowledged that children would not necessarily be noisy at all times and they would not be in the garden at all times, there is the potential for sudden, significant and jarring levels of noise which is inherently unpredictable in nature and difficult to control or mitigate. The applicant's points are noted with regards to the times children use the garden however it would be difficult to control such arrangements through planning conditions. In any event, even if children are not in the garden, the use would still generate noise and disturbance from inside the property, particularly where windows and doors are open for ventilation in warmer weather. This also corresponds with the times when surrounding neighbours are likely to make most use of their gardens. It is also borne in mind that there is the potential for neighbours to be primarily working from home and spending a significant portion of their time at home. The proposal is considered to severely impact on the ability of surrounding neighbours to peacefully enjoy their internal and external living spaces.

9. It is likely that all or most of the children would be dropped off and picked up separately. The proposal could therefore result in up to 9x drop-offs and pick-ups on a daily basis. It is acknowledged that drop-offs and pick-ups are staggered however this would still generate a significant level of activity throughout the day, and more than one would reasonably expect from a typical residential property, and there is little respite for surrounding neighbours.
10. The proposed use, by reason of the nature and scale of the use, the noise, activity and disturbance associated with the proposed use and the close proximity to neighbouring properties and their rear amenity spaces, is considered to result in significant noise and general disturbance to neighbours, to the detriment of their residential amenity. The proposal is therefore contrary to Woking Core Strategy (2012) policy CS21 'Design' and the National Planning Policy Framework (2021).
11. Whilst the proposal offers a childminding service and employment for two people which would be of some benefit, this is not considered to outweigh the significant harm to neighbouring amenity described above. In any event, refusing the planning application does not preclude the applicant from operating a childminding business at a reduced scale which is ancillary to the residential use.

Transportation Impact:

12. The host dwelling has a driveway for one vehicle. This parking space is likely to be occupied by the applicant's vehicle or staff members and so cannot be relied upon to be available for visitors. On-street parking opportunities are limited however there are designated visitor parking bays nearby. However, it is likely that most pick-ups and drop-offs would take place by vehicles parking on the road across the frontage of the host dwelling. The applicant indicates that pick-up and drop off times are staggered. Whilst there are limited on-street parking opportunities in the area, pick-ups and drop-offs are likely to be relatively brief and spread throughout the day and Liquorice Lane is a quiet and lightly trafficked road. The County Highway Authority has reviewed the

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proposal and raises no objection. Notwithstanding the amenity impact of the activity generated by the childminding use, the proposal is not considered to result in significantly harmful impact on parking or highway safety. The proposal is therefore considered to have an acceptable overall transportation impact.

Loss of Housing:

13. The operator of the nursery lives in the dwelling and the property retains all the facilities for day-to-day living. The proposal does not therefore result in the loss of housing.

Conclusion and Planning Balance:

14. The proposed use, by reason of the nature and scale of the use, the noise, activity and disturbance associated with the proposed use and the close proximity to neighbouring properties and their rear amenity spaces, results in significant noise and general disturbance to neighbours, to the detriment of their residential amenity. The proposal is therefore contrary to Woking Core Strategy (2012) policy CS21 'Design' and the National Planning Policy Framework (2021).
15. Whilst the proposal offers a childminding service and employment for two people which would be of some benefit, this is not considered to outweigh the significant harm to neighbouring amenity described above. In any event, refusing the planning application does not preclude the applicant from operating a childminding business at a reduced scale which is ancillary to the residential use.
16. The application is therefore recommended for refusal.

Enforcement:

17. It is also considered expedient to serve an Enforcement Notice having regard to the provisions of the Development Plan and to other material considerations. As such, authority is sought to serve an Enforcement Notice. It is considered expedient to take enforcement action for the reasons outlined above. Furthermore, paragraph 59 of the NPPF (2021) states that "*Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control*".
18. The submission indicates that the change of use commenced in January 2022, meaning the use is not immune from enforcement action.

BACKGROUND PAPERS

1. Site visit photographs
2. Representations
3. Consultation responses

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RECOMMENDATION

REFUSE for the following reasons:

01. The proposed use, by reason of the nature and scale of the use, the noise, activity and disturbance associated with the proposed use and the close proximity to neighbouring properties and their rear amenity spaces, results in significant noise and general disturbance to neighbours, to the detriment of their residential amenity. The proposal is therefore contrary to Woking Core Strategy (2012) policy CS21 'Design' and the National Planning Policy Framework (2021).

It is further recommended that: -

The Director of Legal and Democratic Services be instructed to issue an Enforcement Notice under Section 172 of The Town and Country Planning Act 1990 (as amended) and Officers be authorised in the event of non-compliance with the Notice to prosecute under Section 179 of the Act, or appropriate power, and/or take direct action under Section 178 in the event of non-compliance with the Notice.

It is recommended that enforcement action be authorised to issue an Enforcement Notice in respect of the above land requiring the following within six (6) months of the Notice taking effect:

- i. cessation of the use of the premises as a mixed use as a dwelling and child-minding business

Informatives

1. The plans relating to the development hereby refused are listed below:

Location Plan named '87 Liquorice Lane – Location Plan' received by the LPA on 28.07.2022

Block Plan named '87 Liquorice Lane' received by the LPA on 28.07.2022

Unnumbered plan showing a Proposed Ground Floor Plan received by the LPA on 29.06.2022

Drawing numbered AA0068C/4157 Rev.F (First Floor Plan) received by the LPA on 29.06.2022

Application Form dated 29.06.2022