
Committee Date:	23/01/2014	Application Number:	2013/09254/PA
Accepted:	16/12/2013	Application Type:	Full Planning
Target Date:	10/02/2014		
Ward:	Sutton Trinity		

123 Whitehouse Common Road, Sutton Coldfield, Birmingham, B75 6DT

Retrospective change of use from dwelling house to mixed use of dwelling house and children's day nursery for up to 12 children at any one time.

Applicant: Mrs Jayne Williams
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Agent: Williams Architectural
The Old Registry, 80 Riland Road, Sutton Coldfield, Birmingham, B75 7AU

Recommendation

Approve Subject To Conditions

1. Proposal
 - 1.1. Retrospective planning permission is sought to change the use of part of an extended semi-detached dwelling house into a children's day nursery for up to 12 children with no more than 6 children playing outside in the rear garden.
 - 1.2. This is a resubmission application following a recent dismissed appeal (ref. APP/P4605/A/13/2199516) against the refusal of an application which sought to authorise the children's day nursery use for up to 20 children.
 - 1.3. The day nursery has 23 children registered however no more than 12 children attend the use at any one time. The children that attend are a combination of 0-5 and 6-10 age groups. The older children are cared for pre/after school and during the school holidays.
 - 1.4. Internally, the ground floor comprises 2 rooms for day nursery use, living room, kitchen, utility room, toilet and a bedroom with an en-suite. The first floor comprises an office, two bedrooms and a bathroom and within the roof space is a master bedroom with an en-suite. All bedroom sizes comply with Places for Living SPG.
 - 1.5. The day nursery employs 1 full time and 4 part-time members of staff.
 - 1.6. The front driveway provides 4 car parking spaces.
 - 1.7. The hours of use are from 0730 to 1830 hours Mondays to Fridays.
 - 1.8. [Site Plan, Floor Layout and Elevation Plans](#)

2. Site & Surroundings

- 2.1. The application site relates to a two-storey semi-detached dwelling, which has been enlarged by single storey side and rear extensions, a rear conservatory and a loft conversion. The rear garden provides both a play area for the day nursery (comprising picnic tables, a trampoline and two play huts, one with a slide) and private amenity space for the residents of the dwelling. There is a large outbuilding located at the end of the rear garden which is used by the family for ancillary seating and storage space.
- 2.2. The boundary treatment to the rear garden comprises 1.8 metre high close boarded fencing and mature shrubs. The area to the front of the dwelling is mainly hard surfaced for car parking.
- 2.3. The site lies on the west side of a service road off Whitehouse Common Road. The service road is 685 metres long, running between the junctions with Tamworth Road and Barnard Road. The surrounding area is predominantly residential in character.
- 2.4. The surrounding built form in the vicinity of the site largely comprises two-storey detached and semi-detached housing. To the north of the site (approximately 591 metres) at the junction with Tamworth Road is Ashfurlong Medical Centre with an ancillary pharmacy and to the south of the site (approximately 126 metres) located near the junction with Barnard Road is a hotel, restaurant, petrol filling station and a small parade of commercial premises.
- 2.5. The site has good access to public transport services.
- 2.6. [Location Plan](#)
- 2.7. [Street View](#)

3. Planning History

- 3.1. 23 November 2007 - 2007/04821/PA - Planning permission approved for the erection of a single storey rear extension, subject to conditions.
- 3.2. 24 January 2008 - 2007/07267/PA – Planning permission approved for the erection of two-storey side/rear, single-storey front and rear extensions and conservatory, subject to conditions.
- 3.3. 2 April 2013 - 2012/08240/PA – Refused application for retrospective change of use from dwelling house to mixed use of dwelling and children's day nursery for 20 children. Refused on the grounds that the continued use of the property as a dwelling and children's day nursery for up to 20 children would adversely affect the amenity of occupiers of dwellings in the vicinity by reason of noise and general disturbance. As such the proposal would be contrary to Paragraphs 3.8, 3.10 and 8.15 of the Birmingham UDP 2005, guidance in Day Nurseries adopted as Supplementary Planning Guidance, and the National Planning Policy Framework.
- 3.4. APP/P4605/A/13/2199516 – Subsequent Appeal Dismissed on 13 November 2013.
- 3.5. 2013/0358/ENF – Enforcement Notice served on 17/12/2013 for unauthorised change of use from dwelling house to mixed use of dwelling house and children's

day nursery for up to 20 children. The compliance date for the notice is 28 March 2014.

4. Consultation/PP Responses

4.1. Ward Councillors, residents association and adjoining occupiers were notified.

4.2. Councillor Parkin objects on the grounds that the application is inappropriate in this location.

4.3. A petition against the application was received with 56 signatures.

4.4. 22 letters of objection received from adjoining occupiers, expressing the following:

- Unacceptable harm to residential amenity in terms of noise and disturbance associated with children playing in the rear garden and the coming and going of vehicles.
- Loss of privacy.
- Highway safety concerns caused by illegal car parking, traffic generation and the speed of vehicles using the service road.
- Inappropriate business use in a quiet residential road.
- The harm caused by the day nursery in terms of highway safety, impact on amenity and noise and disturbance outweighs any presumption in favour of sustainable development.
- Loss of trees and plants in neighbouring gardens caused by chemical waters from the swimming pool when it was emptied.
- Devalue residential properties.
- The planting area along the front boundary has been removed to provide access for vehicles onto the forecourt.
- All the blinds and curtains on the front windows are continually closed which gives the appearance of a business property, which is completely unsuitable for this area.
- Waste is being stored on the forecourt, which is now at a commercial scale.
- Unacceptable visual harm caused by alterations/ extensions carried out to the property.
- There are plenty of alternative day nurseries in the area that have a good amount of parking and are not adjoined by residential properties.
- Loss of residential accommodation which is detrimental to the Council's objectives in its housing policies.
- The day nursery has been operating without planning permission.
- A condition to restrict the number of children to no more than 12 will be difficult to enforce and virtually impossible for the Council to monitor or control the level and scope of the activity at the property or to prevent any later changes.

4.5. A list of daily attendance was submitted from a nearby occupier, which shows that between 15th April 2013 and 5th December 2013 there were up to 23 children attending the day nursery each day during the week. Photos were also submitted with an objection letter which shows illegal parking over the footpath and a large swimming pool, play equipment and marquee erected in the rear garden of the site.

4.6. 1 letter of support was received from an adjoining occupier stating that the noise and disturbance caused by the children of the day nursery is no greater than other households with two or more children. The day nursery invests a lot into the environment which surrounds the children and provides a service that ensures the

children's welfare, safety and happiness is paramount at all times. The day nursery works with Birmingham City Council's Social Services and provides care for children whose parents are struggling or having difficulties.

- 4.7. A letter has been received from Burbury Park Childminders Resource Centre, which is a charity for all childminders in Birmingham and the home of the First Steps Network, which a contractual service that is provided on behalf of the City Council. It is advised that the applicant is an active member of the First Steps Network providing a valuable service for the Children's Centre Childminding Link Scheme which provides a short-term respite childcare for families identified as in need. It further states that by having a bank of Childminders across the locality means that most families get a placement with a provider within walking distance to their home.
- 4.8. Regulatory Services – No objection subject to conditions requesting a scheme of noise insulation between the day nursery rooms and No. 121 Whitehouse Common Road; limit the number of children attending the day nursery to no more than 12 at any one time; and to restrict the number of children playing outside to no more than 6 at any one time.
- 4.9. Transportation Development – No objection subject to conditions to restrict the number of children to a maximum of 12 and to provide disabled parking space and cycle storage facilities.

5. Policy Context

- 5.1. Birmingham Unitary Development Plan, Draft Birmingham Plan, Day Nurseries SPG, Places for Living SPG, Car Parking Guidelines SPD and National Planning Policy Framework.

6. Planning Considerations

Policy Context

- 6.1. The NPPF contains a presumption in favour of sustainable development. It advises that the planning system has a number of roles to perform within each of the three dimensions of sustainable development. One of the core planning principles is to secure a good standard of amenity for all existing and future occupants of land and buildings. The NPPF also recognises the need to provide facilities that communities need and to guard against the unnecessary loss of valued facilities and services.
- 6.2. The adopted UDP also advises that there is a need to protect and enhance what is good in the City's environment, and to improve what is less good. Proposals which would have an adverse effect on the quality of the built environment will not normally be allowed.
- 6.3. Policy 8.15 of the adopted UDP and Day Nurseries SPG state that the main issues regarding proposals for day nurseries are the suitability of the premises, number of children to be accommodated, traffic/car parking, noise and disturbance particularly by way of impact on the level of amenity currently enjoyed by the occupiers of adjacent properties, and the general amenity/residential character of the area.

Background and Appeal History

- 6.4. The applicant has advised that a child minding business has been operating from the dwelling house since 2006 and over the years the number of children in care has

increased. Following an Ofsted inspection in 2012, the applicant was made aware that planning permission is likely to be needed as the use, in terms of the number of children attending, now constitutes a day nursery.

- 6.5. A retrospective planning application for a change of use of part of the dwelling house into a day nursery for up to 20 children was submitted in December 2012. The application was refused and dismissed at appeal in November 2013. In dismissing the appeal the Inspector noted that the “relatively intensive use of the property introduces activity to this residential area at an appreciably higher and more intensive level than would normally be experienced at a property of this type and in this kind of context. The additional activity includes, for example, the extra comings and goings associated with the dropping-off and collection of children and the more intensive use of the rear garden for play and recreation by the children. Such additional activity would create noise and disturbance on a regular basis, beyond what would reasonably be expected of a purely domestic use, adversely affecting the occupiers of neighbouring dwellings”. The Inspector concluded that “the proposal would harm the living conditions of neighbours”.
- 6.6. An enforcement notice (ref. 2013/0358/ENF) has been served on the applicant in regard to the unauthorised use of part of the dwelling house as a children’s day nursery for up to 20 children. The effective date for this notice is 28 January 2014 with compliance by 28 March 2014.
- 6.7. I note that there have been no complaints received by the Environmental Protection Unit prior to this application.

Suitability of the premises and Impact on residential amenity

- 6.8. Policy 8.15 of the adopted UDP and guidance within the Day Nurseries SPG state that semi-detached houses may be considered where it can be demonstrated that the number of children proposed or the location of nursery rooms is unlikely to cause undue noise and disturbance nuisance to adjoining residential occupiers, and no suitable alternative exists in the particular area. It further states that proposals for day nurseries in residential frontages should retain a predominantly residential use on the upper floor(s) with rooms facing onto the street being restricted to residential use. Day Nurseries will not normally be accepted in residential roads which have a general absence of non-residential traffic and contain houses capable of single family occupation.
- 6.9. I consider that the main source of noise and disturbance arising from a day nursery use operating within a semi-detached house is generally from the use of the outdoor play area, the location of the day nursery rooms and the coming and going of vehicles.
- 6.10. The rear garden is relatively large however it is adjoined by gardens of neighbouring properties. I consider that the extra activity resulting from the use of the rear garden for 6 children is similar to other households that have large families or children visiting and playing in their rear garden. I note Regulatory Services raise no objection to 12 children attending the use at any one time and up to 6 children playing in the rear garden providing this is imposed by condition. I concur with this view and have recommended conditions accordingly.
- 6.11. The day nursery occupies two ground floor rooms and shares the lounge, kitchen and ground floor toilet with the domestic use of the property. The day nursery rooms are located along the party wall with No. 121 Whitehouse Common Road. I have

recommended a condition requiring noise insulation to the day nursery rooms that share the party wall as per the guidance set out in Day Nurseries SPG and the recommendation made by Regulatory Services.

- 6.12. I acknowledge that the site is located on a service road which has an absence of non-residential traffic. However the service road runs parallel to Whitehouse Common Road which is a busy thoroughfare and is used by non-residential traffic. There are a number of access points to Whitehouse Common Road from the service road.
- 6.13. The applicant has noted that children arrive and leave the premises at different times of the day, as some children only attend the day nursery for half a day and the older children only attend for short periods before and after school and during the school holidays. It is also noted that a number of children walk to the day nursery from nearby schools and surrounding residential roads. The site also has reasonable level of accessibility to public transport.
- 6.14. I am therefore of the view that the traffic generated by the day nursery is not excessive given the relatively low number of children attending the day nursery, the staggered arrival and leaving times of children and the availability of different modes of travel. The opening hours are during normal working day hours (between 07.30am to 6.30pm Monday to Friday) and I have recommended a condition to secure these hours. I therefore consider that the noise and disturbance associated with vehicles visiting the site is negligible and does not have a detrimental impact on neighbouring residents.
- 6.15. From site observations the parking on the service road is generally low and the traffic/parking associated with the dropping-off and collection of children is not having a detrimental impact upon highway safety. The site can provide 3 standard sized car parking spaces on the front forecourt which is considered to be adequate parking for the day nursery use and in accordance with the Car Parking Guidelines SPD and Day Nurseries SPG which recommend 1 space per 8 children. I note Transportation Development raises no objection to the application.
- 6.16. The property has retained its domestic appearance and looks similar to other houses in the vicinity. It does not have any signs advertising the day nursery or posters/displays on the windows. The ground floor includes a bedroom window facing onto the street and the rooms on the upper floors have remained for domestic use only. I therefore consider that the day nursery use has not changed the residential character or appearance of the property. In response to the concerns raised by local occupiers about large amounts of waste being stored on the forecourt I have recommended a condition to ensure adequate facilities for refuse storage are provided for the day nursery use.
- 6.17. I note that there are 5 other day nurseries operating within the area, which clearly indicates that there is a high demand for such uses. I do not consider that there has been a cumulative impact of such uses that has undermined the residential character of the area.

7. Conclusion

- 7.1. I am satisfied that the reduction in the number of children from 20 to 12 would overcome the Planning Inspectors reason for refusal and that the site is suitable for a day nursery of this scale without adversely impacting on the amenity of neighbouring residents and the residential character of the area.

7.2. There has been no change to the residential appearance of the property and the property can still provide family accommodation. I have recommended conditions to restrict the number of children attending the day nursery and playing in the rear garden; the number and location of rooms allocated for day nursery use; and the opening hours in order to prevent over intensification of the use and in the interests of safeguarding amenity of neighbouring residents. I therefore consider that the retrospective proposal complies with policies and guidance contained within the adopted UDP 2005, Day Nurseries SPG and the NPPF.

8. Recommendation

8.1. I therefore recommend approval subject to the following conditions:

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- 1 Requires noise insulation (variable) between the Day Nursery Rooms and No. 121 Whitehouse Common Road.
 - 2 Requires the prior submission of details of refuse storage
 - 3 Limits the number of children able to attend the day nursery to a maximum of 12 children at any one time.
 - 4 Limits the number of children able to play outside in the rear garden to a maximum of 6 children.
 - 5 Limits the hours of operation to between 0730 and 1830 Mondays to Fridays.
 - 6 Limits the day nursery use to specific rooms within the dwellinghouse.
 - 7 Restricts that residents are associated with the day nursery.
 - 8 The storage/garden outbuilding located within the rear garden shall only be used for ancillary purposes associated with the residential accommodation and does not form part of the nursery use.
 - 9 Prevents the use from changing within the use class
 - 10 Requires the scheme to be in accordance with the listed approved plans
 - 11 Limits the approval to 3 years (Full)
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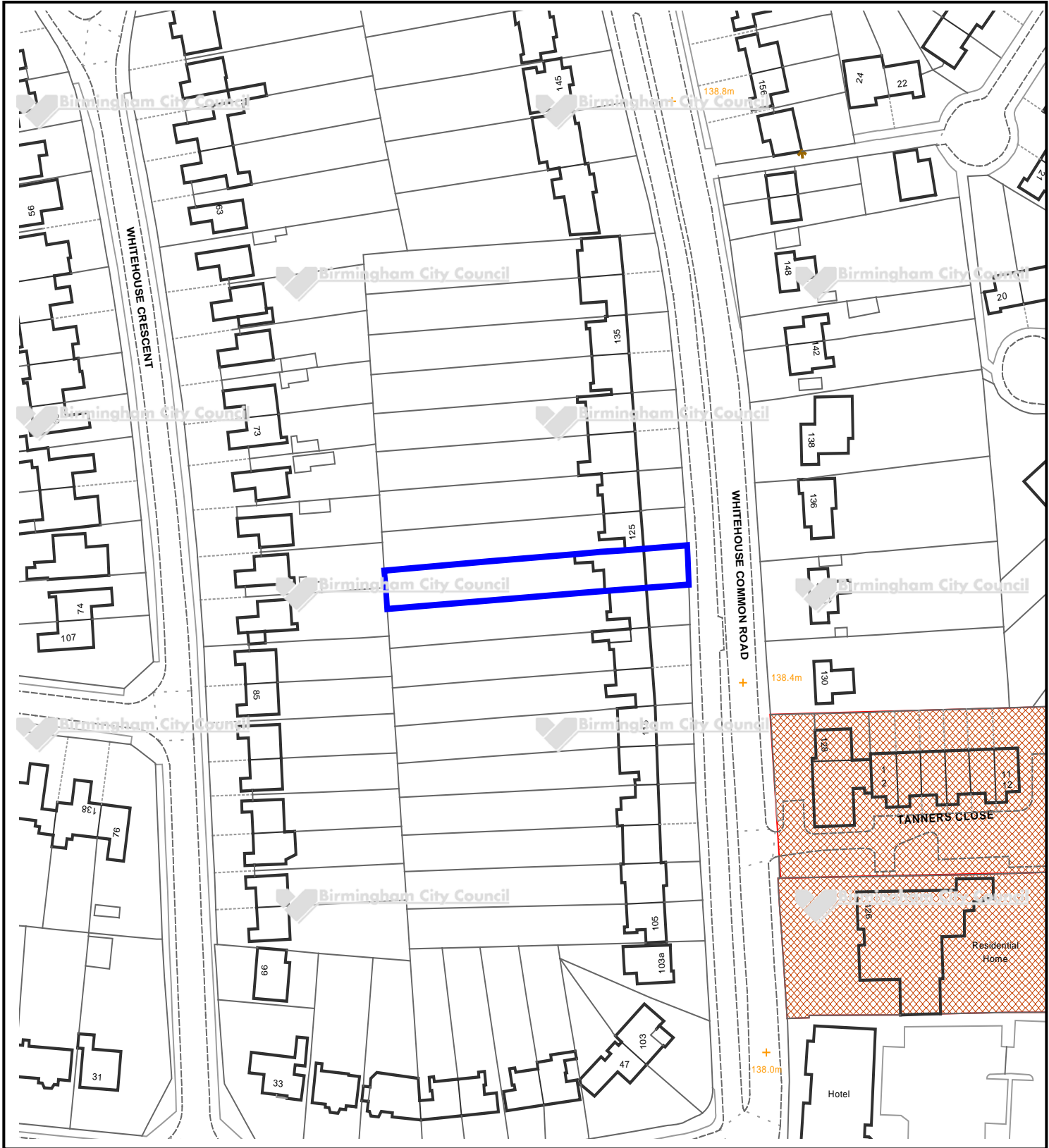
Case Officer: Helen Hawkes

Photo(s)



Figure 1 - Site

Location Plan



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